CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 32 OCTOBER 7, 1998 NO. 40

This issue contains:

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

19 CFR Parts 4, 18, 122, 123, 127, 148, 178, and 192

(T.D. 98–74)

RIN 1515–AB99

LAY ORDER PERIOD; GENERAL ORDER; PENALTIES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with some changes, proposed amendments to the Customs Regulations regarding the obligation of the owner, master, pilot, operator, or agent of an arriving carrier to provide notice to Customs and to a bonded warehouse of the presence of merchandise or baggage that has remained at the place of arrival or unlading beyond the time period provided by regulation without entry having been completed. The document requires one of the arriving carrier's obligated parties, or any subsequent in-bond carrier or party who accepts custody under a Customs-authorized permit to transfer, to provide notice of the unentered merchandise or baggage to a bonded warehouse. The notice to the bonded warehouse proprietor initiates his obligation to arrange for transportation and storage of the unentered merchandise or baggage at the risk and expense of the consignee. The document also amends the Customs Regulations to provide for penalties or liquidated damages against the owner or master of any conveyance, or agent thereof, for failure to provide the required notice to Customs or to a bonded warehouse proprietor. The document also provides for the assessment of liquidated damages against any subsequent in-bond carrier or other party who accepts custody of the merchandise or baggage under a Customs-authorized permit to transfer and who fails to notify Customs and a bonded warehouse of the presence of such unentered merchandise or baggage and also against the warehouse operator who fails to take required possession of the merchandise or baggage. These regulatory changes reflect amendments to the underlying statutory authority enacted as part of the Customs Modernization provisions of the North American Free Trade Agreement Implementa-

tion Act. In addition, this document makes certain conforming changes to the Customs Regulations in order to reflect a number of other statutory amendments and repeals enacted by the Customs Modernization provisions and in order to reflect the recent recodification and reenactment of title 49, United States Code.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT:

For legal matters: Jeremy Baskin, Penalties Branch, Office of Regulations and Rulings (202) 927–2344.

For operational matters: Steven T. Soggin, Office of Field Operations, (202) 927–0765.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of enactment of the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057. Title VI of that Act sets forth Customs Modernization provisions that are popularly referred to as the Mod Act.

Section 656 of the Mod Act amended section 448(a) of the Tariff Act of 1930 (19 U.S.C. 1448(a)) to provide, *inter alia*, that: (1) the owner or master of any vessel or vehicle, or the agent thereof, shall notify Customs of any merchandise or baggage unladen for which entry is not made within the time prescribed by law or regulation; (2) the Secretary of the Treasury shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given; (3) any such administrative penalty shall be subject to mitigation and remission under section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618); and (4) such unentered merchandise or baggage shall be the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 490 of the Tariff Act of 1930, as amended (19 U.S.C. 1490). On July 31, 1997, Customs published a notice of proposed rulemaking in the Federal Register (62 FR 40992) proposing to revise paragraph (a) of § 4.37 of the Customs Regulations (19 CFR 4.37) and add new § 122.50 and § 123.10 (19 CFR 122.50 and 19 CFR 123.10) to implement these Mod Act statutory changes for air, land and sea carriers. Under the proposed regulatory text, importing carriers were to be afforded a five-working-day lay order period after the conclusion of an initial five-working-day period after unlading or arrival of merchandise to notify Customs, in writing or by any Customs-authorized electronic data interchange system, of the presence of the unentered merchandise or baggage. Penalties could be imposed if, after the five-day lay order period, Customs had not been notified of the presence of the unentered merchandise.

Section 658 of the Mod Act amended section 490 of the Tariff Act of 1930 (19 U.S.C. 1490) to provide that: (1) except in the case of U.S. gov-

ernment importations, the carrier shall notify the bonded warehouse of any imported merchandise for which entry is not made within the time prescribed by law or regulation, or for which entry is incomplete because of failure to pay estimated duties, fees or interest, or for which entry cannot be made for want of proper documents or other cause, or which Customs believes is not correctly and legally invoiced; and (2) after such notification from the carrier, the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The July 31, 1997, notice of proposed rulemaking also proposed to revise paragraph (b) of § 4.37 of the Customs Regulations (19 CFR 4.37) and to include in new §§ 122.50 and 123.10 provisions to implement these Mod Act statutory changes. The proposed regulatory text would have required the carrier to provide the appropriate notification, in writing or by any Customs-authorized electronic data interchange system, and also would have required that the bonded warehouse operator take possession of the merchandise within five working days after receipt of such notification or else be liable for liquidated damages under the terms and conditions of his custodial bond. The proposed regulatory changes also included a cross-reference to § 113.63(a)(1) of the Customs Regulations (19 CFR 113.63(a)(1)) so as to reflect the existing basis for such custodial bond liability. In addition, the document proposed to amend paragraph (d) of § 4.37 by replacing the word "owner" with "consignee" to align on the corresponding statutory language.

Section 611 of the Mod Act amended section 436 of the Tariff Act of 1930 (19 U.S.C. 1436), *inter alia*, by including therein a reference to 46 U.S.C. App. 91, with the result that penalties for violations of outbound vessel manifest filing requirements would be incurred under the provisions of 19 U.S.C. 1436 rather than under 46 U.S.C. App. 91. The July 31, 1997, document also proposed to amend § 192.4 of the Customs Regulations (19 CFR 192.4) to reflect this change.

Section 690 of the Mod Act provided for the repeal of a number of statutory provisions, some of which are still referred to in Parts 4 and 122 of the Customs Regulations (19 CFR Parts 4 and 122). The July 31, 1997, document also proposed to correct those outdated references by removing them or replacing them with references to their successor statutory provisions.

Finally, Public Law 103–272, 108 Stat. 745, dated July 5, 1994, reenacted and recodified the provisions of title 49, United States Code. Section 2(b) thereof reenacted as a new section (19 U.S.C. 1644a) certain title 49 provisions dealing with the application, to civil aircraft, of the laws and regulations regarding the entry and clearance of vessels. The July 31, 1997, document proposed to amend Parts 122, 123 and 148 of the Customs Regulations (19 CFR Parts 122, 123 and 148) by updating the "49 U.S.C. App." statutory references therein to reflect the changes made by section 2(b) or other provisions of Public Law 103–272.

The July 31, 1997, notice of proposed rulemaking made provision for the submission of public comments on the proposed regulatory changes for consideration before adoption of those changes as a final rule, and the prescribed public comment period closed on September 29, 1997. A total of 56 responses to this solicitation of comments were received by Customs. The comments submitted are summarized and responded to below.

DISCUSSION OF COMMENTS

Comment:

Forty-one commenters suggested that the proposed five-day period after landing of merchandise, during which the carrier was required to notify Customs of unentered merchandise, was too short and did not reflect current commercial reality. One of the 41 commenters opposed to the five-day time period indicated that, under current procedures, approximately 3 percent of arriving merchandise remains unentered and qualifies for general order. That same commenter indicated that, under the proposed rule, some 60 percent of cargo would qualify for general order. If that were to be the case, general order space would be overtaxed, unnecessary extra paperwork would ensue, and damage to cargo moving unnecessarily to general order would occur.

One commenter suggested that while 5 working days was too short, 10 working days recognized commercial realities and would be sufficient time to allow for unentered merchandise to remain in the custody of the arriving carrier.

Customs response:

Customs notes that many of the comments opposed to the proposed five-day period indicated that the current regulations provide for a 30-day lay order period, and those commenters objected that the proposed rule involved a drastic reduction in that regulation-mandated lay order period. However, these commenters are operating under a misconception that the current regulations provide for a 30-day lay order period. They do not. The current regulation addressing lay order (19 CFR 4.37) requires that merchandise remaining on the wharf or pier after the fifth working day after unlading shall be deposited in the public stores or a general order warehouse, except that, at the written request of the owner, agent, or master of the vessel, the port director may issue a lay order allowing such merchandise or baggage to remain on the wharf or pier properly protected for a further period which shall be specified in the order. As a matter of practice, many port directors allow for a lay order period of 30 days, but such practice is discretionary with the port director and is not required by regulation.

After review of these comments, Customs agrees that there should be an increase in the proposed time period during which unentered merchandise may remain at the place of unlading before notification to Customs of the presence of such merchandise so that it can be moved into general order. In order to establish uniformity and in consideration

of these comments, the final regulatory texts set forth below provide for 15 calendar days, rather than the proposed five working days, during which unentered merchandise may remain at the place of unlading without notification to Customs. Accordingly, Customs must be notified of the presence of merchandise that remains unentered at the wharf, pier, or place of unlading after the fifteenth calendar day after unlading. In addition, the headings of § 4.37 and of proposed new §§ 122.50 and 123.10 have been changed to read "[g]eneral order" as there will no longer be a lay order period for unentered merchandise beyond the original 15-calendar-day time period after its unlading. The final regulatory texts refer to calendar days for ease of use of current electronic systems. Additionally, port directors will not have discretion to extend the time period during which unentered merchandise may remain on the wharf, pier or place of unlading.

Comment:

Three commenters stated that the proposed regulatory provision for penalties for the carrier's failure to notify Customs of landed cargo not covered by a permit for its release is unnecessary and should be removed.

Customs response:

Customs does not agree. As previously noted, section 656 of the Mod Act amended section 448(a) of the Tariff Act of 1930 (19 U.S.C. 1448(a)) to provide that the owner or master of any vessel or vehicle, or the agent thereof, shall notify Customs of any merchandise or baggage unladen for which entry is not made within the time prescribed by law or regulation. Section 656 also provides that the Secretary of the Treasury shall by regulation prescribe administrative penalties not to exceed $1,000 for each bill of lading for which notice is not given. The language of the statute is clear. The proposed regulatory texts merely reflected that which is required by statute.

Comment:

Two commenters objected to the wording of the proposed regulations that stated that Customs "may" issue penalties for failure to notify. The commenters argued that the language of the statute was mandatory.

Customs response:

Customs disagrees. The language of the statute is mandatory in that the Secretary "shall" promulgate regulations. Assessment of the monetary penalties remains a matter of enforcement discretion, and the proposed regulatory language therefore should not be changed from the discretionary "may" to the mandatory "shall."

As noted above, in addition to the notification to Customs by the master, owner, or agent thereof of the presence of unentered cargo pursuant to 19 U.S.C. 1448(a), the carrier, pursuant to 19 U.S.C. 1490, except in the case of U.S. government importations, is required to notify the bonded warehouse of any imported merchandise for which entry is not

made within the time prescribed by law or regulation, or for which entry is incomplete because of failure to pay estimated duties, fees, or interest, or for which entry cannot be made for want of proper documents or other cause, or which Customs believes is not correctly and legally invoiced; and after such notification from the importing carrier, the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. Thus, the regulatory proposals in the July 31, 1997, document placed an obligation on the carrier to notify Customs of the presence of unentered merchandise within five working days after the initial five-day period; they also placed an additional obligation on the carrier to notify the bonded warehouse within a third consecutive five-day period. However, the proposed regulations were confusing as to the time periods in which the carrier or its master or owner or agent was required to act. Accordingly, the final regulatory texts as set forth below have been simplified to require the owner or master of any vessel or agent thereof, the owner or pilot of any aircraft or agent thereof, or the owner or operator of a vehicle or agent thereof to notify Customs and a bonded warehouse of all merchandise that remains unentered after a 15-calendar-day period after its landing. This notification must be provided within 20 calendar days after landing of the merchandise. Although not specifically stated in the regulatory texts, it should be understood that if the 20th calendar day is a Saturday, Sunday, or holiday, the deadline for notice automatically will be extended to the next working day after that 20th calendar day. As provided in the statute and in the proposed regulatory texts, the final texts set forth below state that a failure to provide timely notification to Customs may result in the assessment of monetary penalties of up to $1,000 per bill of lading; however, the final regulatory texts have been modified to allow for penalties equal to the value of the merchandise on the bill of lading when that value is less than $1,000.

Comment:

One commenter raised a question as to the obligation to notify Customs of unentered merchandise or baggage that travels under an immediate transportation (IT) entry to a port of destination or moves within a port under a permit to transfer to a bonded facility such as a container station and remains unreleased or unentered after arrival at the port of destination or bonded facility.

Customs response:

Customs agrees that the proposed regulations did not specifically reflect the obligation of a party to notify Customs and a Customs-authorized bonded warehouse of such merchandise or baggage when it remained unreleased and unentered, even though there was nothing in the statute or proposed texts to distinguish the merchandise or baggage described by the commenter from any other merchandise or baggage that was landed from the arriving carrier and remained unreleased and unentered. In order to clarify this point, a new paragraph (b) text has been included in § 4.37 and in new §§ 122.50 and 123.10 to specify the

obligation to notify Customs and a bonded warehouse of the party who initiates a bonded movement or who receipts for merchandise or baggage under a permit to transfer when the merchandise or baggage remains unentered and becomes eligible for general order. If the party fails to notify Customs or a bonded warehouse of the unentered or unreleased merchandise or baggage within the applicable 20-day period, he may be liable for liquidated damages under the terms and conditions of his custodial bond. See 19 CFR 113.63(c)(4). It should be noted that a claim for liquidated damages arising from the failure to provide this notification is not considered to constitute a claim involving merchandise and therefore the liquidated damages must be assessed at $1,000 per violation.

Comment:

Several commenters averred that while the proposed paragraph (b) text of § 4.37 and of new §§ 122.50 and 123.10 indicated that Customs may impose a penalty against the owner, master, or agent for the failure to notify Customs of the presence of the unentered merchandise, no comparable penalty or liquidated damages action are stated with regard to the failure to provide notification to the bonded warehouse. The commenters suggested that penalties or liquidated damages against the carrier for the failure to notify the bonded warehouse should be stated.

Customs response:

Customs agrees that the carrier should be subject to claims for liquidated damages for failure to provide notification to the bonded warehouse. The underlying statute (19 U.S.C. 1490) states that a carrier "shall notify" the bonded warehouse of such merchandise or baggage. Inasmuch as the carrier retains such obligation, it is the view of Customs that claims for liquidated damages in such circumstances are consistent with the basic intent and requirement of the statute. In this regard, it should be noted that the carrier remains responsible for the loss or theft of any such unentered merchandise or baggage until it is properly transferred from the carrier's control. Moreover, Customs notes that, as in the case of the proposed paragraph (a) texts discussed above, the proposed paragraph (b) texts did not address the obligation of a custodian of unentered merchandise or baggage to provide notification when the merchandise or baggage travels under an IT entry or moves under a permit to transfer. Accordingly, the proposed paragraph (b) texts (redesignated below as paragraph (c) in the texts of §§ 4.37, 122.50 and 123.10 as a consequence of the addition of new paragraph (b)) have been modified to place the obligation to notify the bonded warehouse on the carrier or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry. For purposes of clarification, those texts have also been modified to indicate that the claim for liquidated damages arising for failure to notify the bonded warehouse shall be assessed at $1,000 per bill of lading for which notification is not given.

Comment:

Several commenters indicated that no provision exists to allow for the warehouse proprietor to refuse cargo. One of these commenters pointed out that there may be instances where local ordinances would prohibit a warehouse proprietor from taking possession of certain classes of merchandise, such as hazardous merchandise. That same commenter indicated that there must be a provision in the regulations to allow the proprietor to have a say over what cargo may be accepted.

Customs response:

Customs agrees that there may be situations where the general order warehouse may be incapable of storing certain types of merchandise that require specialized storage facilities. Customs also acknowledges that no general order warehouse facilities exist at certain ports. Accordingly, new paragraph (e) texts have been added to § 4.37 and have been included in new §§ 122.50 and 123.10 as set forth below to allow the port director, in ports where there is no bonded warehouse to accept general order merchandise or if merchandise requires specialized storage facilities which are unavailable in a bonded facility, to direct the storage of merchandise by the carrier or by any other appropriate means. However, Customs does not agree with the suggestion that the regulations be amended to allow the bonded warehouse operator to decline to accept merchandise he is capable of storing. The underlying general order statute does not allow for such discretion on the part of the general order warehouse operator.

Comment:

Two commenters inquired as to whether carriers can delay delivery of freight to bonded warehouses if freight charges have not been satisfied.

Customs response:

Customs notes that the regulations do not authorize such delay. The current applicable regulation (19 CFR 127.31) provides for the payment of liens for freight from the proceeds of sale of the unentered merchandise.

Comment:

One commenter indicated that a bonded warehouse operator should not be subject to liquidated damages for untimely taking possession of such merchandise unless he has given consent to handle the merchandise.

Customs response:

Customs disagrees. The underlying statutory authority does not mention that bonded warehouse operators must consent to the acceptance of any merchandise. Customs is unwilling to impose such a condition by regulation.

ADDITIONAL CHANGES TO THE REGULATIONS

In addition to, or as a consequence of, the changes mentioned above in the discussion of the public comments, the final regulatory text amendments set forth below reflect the following changes that were not included in the July 31, 1997, proposals.

1. Section 4.37 is set forth as an entirely revised section in order to accommodate the changes discussed above as well as the following further changes:

a. The texts of present paragraphs (e) and (f) have been omitted from the revised section because they are not consistent with the current statutory responsibilities as reflected elsewhere in the section text;

b. The text of the last sentence of proposed paragraph (b) is set forth separately as a new paragraph (d) in the revised section text;

c. The text of present paragraph (c) is designated as paragraph (f) in the revised section and the text of the paragraph has been modified to be more consistent with the language of the underlying statutory authority (19 U.S.C. 1457); and

d. The text of present paragraph (d) is designated as paragraph (g) in the revised section and the text of the paragraph has been modified by removing the reference to the public stores.

2. The organizational and other changes described above in the case of revised § 4.37 are also reflected in new §§ 122.50 and 123.10 except that the two new sections have no counterpart to paragraph (f) of revised § 4.37. Thus, paragraphs (a) through (f) of new §§ 122.50 and 123.10 correspond to paragraphs (a) through (e) and (g) of revised § 4.37.

3. In Part 18 of the regulations (19 CFR Part 18): the reference to a lay order period has been removed from the first sentence of paragraph (a)(1) of § 18.2; paragraph (d) of § 18.12 is revised in order to conform to the new requirements relating to the arrival of IT entry merchandise at the port of destination; paragraph (e) of § 18.12 is removed because it is superseded by the new general order regulatory provisions; and, in § 18.25, the cross-reference to the regulatory provision covering the import bond is corrected to refer to the custodial bond provision.

4. Section 659 of the Mod Act amended section 491 of the Tariff Act of 1930 (19 U.S.C. 1491) to provide that any entered or unentered merchandise which shall remain in a bonded warehouse pursuant to 19 U.S.C. 1490 for 6 months (rather than 1 year) from the date of importation thereof, without all estimated duties having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by Customs at public auction or retained for official use by a government agency. This document modifies the provisions of 19 CFR 18.11(a), 18.12(a), 127.2, 127.4, 127.11 and 127.28(d) to reflect the 6-month period set forth in the statute.

5. Finally, in §§ 122.117(b)(1) and 122.120(d)(1), the references to lay order are replaced by references to general order in order to reflect the

change in terminology discussed above in connection with the comments on § 4.37 and new §§ 122.50 and 123.10.

CONCLUSION

Accordingly, based on the comments received and the analysis of those comments as set forth above, and after further review of this matter, Customs believes that the proposed regulatory amendments should be adopted as a final rule with certain changes thereto as discussed above and as set forth below. This document also includes an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

For the reasons set forth above and because the amendments conform the Customs Regulations to statutory requirements that are already in effect, pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, this document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collection of information contained in this final rule was not proposed in the preceding notice of proposed rulemaking. The collection of information has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3507(j) and assigned control number 1515–0220. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning the collection of information should be directed to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503, with a copy to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Any such comments should be submitted not later than 60 days after the date of publication of this document in the Federal Register. Comments are specifically requested concerning: (a) whether the collection of information is necessary for the proper performance of the functions of the U.S. Customs Service, including whether the information will have practical utility; (b) the accuracy of the estimated burden associated with the collection of information (see below); (c) how to enhance the quality, utility, and clarity of the information to be collected; (d) how to minimize the burden of complying with the collection of information, including the application of automated collection techniques or other forms of information technology; and (e) estimates of

capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this regulation is in §§ 4.37, 122.50 and 123.10. This information is required to ensure that merchandise and baggage imported into the United States is properly entered or otherwise accounted for in accordance with statutory requirements. This information will be used by Customs to determine whether private parties have carried out their statutory responsibilities, and to assess monetary penalties or liquidated damage claims for failure to meet those responsibilities, and this information also will be used by private parties in order to enable them to carry out their statutory responsibilities and thus avoid a liability for monetary penalties or liquidated damages for failing to do so. The collection of information is mandatory. The likely respondents and/or recordkeepers are individuals and business organizations, including importers and carriers.

Estimated total annual reporting and/or recordkeeping burden: 7,500 hours.

Estimated average annual burden per respondent/ recordkeeper: .25 hours.

Estimated number of respondents and/or recordkeepers: 30,000.

Estimated annual frequency of responses: 1.

List of Subjects

19 CFR Part 4

Cargo vessels, Common carriers, Customs duties and inspection, Entry, Exports, Fishing vessels, Imports, Maritime carriers, Passenger Vessels, Penalties, Reporting and recordkeeping requirements, Shipping, Vessels, Yachts.

19 CFR Part 18

Bonded transportation, Bonds, Common carriers, Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements.

19 CFR Part 122

Air carriers, Aircraft, Airports, Air transportation, Baggage, Bonds, Customs duties and inspection, Foreign commerce and trade statistics, Freight, Imports, Penalties, Reporting and recordkeeping requirements.

19 CFR Part 123

Aircraft, Canada, Customs duties and inspection, Imports, International boundaries, International traffic, Mexico, Motor carriers, Railroads, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 127

Customs duties and inspection, Exports, Reporting and recordkeeping requirements.

19 CFR Part 148

Aliens, Baggage, Crewmembers, Customs duties and inspection, Declarations, Foreign officials, Government employees, International organizations, Privileges and Immunities, Reporting and recordkeeping requirements.

19 CFR Part 178

Administrative practice and procedure, Reporting and recordkeeping requirements.

19 CFR Part 192

Aircraft, Customs duties and inspection, Export Control, Penalties, Reporting and recordkeeping requirements, Seizures and forfeiture, Vehicles, Vessels.

AMENDMENTS TO THE REGULATIONS

Accordingly, for the reasons stated in the preamble, Parts 4, 18, 122, 123, 127, 148, 178 and 192 of the Customs Regulations (19 CFR Parts 4, 18, 122, 123, 127, 148, 178 and 192) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 and the specific authority citations for §§ 4.7a, 4.36 and 4.37 continue to read, and the specific authority citations for §§ 4.9 and 4.68 are revised to read, as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * * * *

Section 4.7a also issued under 19 U.S.C. 1498, 1584;

* * * * * * *

Section 4.9 also issued under 42 U.S.C. 269;

* * * * * * *

Section 4.36 also issued under 19 U.S.C. 1431, 1457, 1458, 46 U.S.C. App. 100;

Section 4.37 also issued under 19 U.S.C. 1448, 1457, 1490;

* * * * * * *

Section 4.68 also issued under 46 U.S.C. App. 817d, 817e;

* * * * * * *

2. Part 4 is amended by removing and reserving footnotes 17, 24, 71, and 74 in §§ 4.7a(a), 4.12(a)(3), 4.36(c) and 4.37(d).

3. In § 4.6, paragraph (c) is amended by removing the reference "19 U.S.C. 1585" and adding, in its place, the reference "19 U.S.C. 1436".

4. In § 4.7a, the first sentence of paragraph (a) is amended by removing the words ", required by section 432, Tariff Act of 1930, to be separately specified".

5. In § 4.36, paragraph (c) is amended by removing the words "a cargo within the purview of the proviso to the first subdivision of section 431, Tariff Act of 1930" and adding, in their place, the word "cargo".

6. The heading and text of § 4.37 are revised to read as follows:

§ 4.37 General order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the master or owner of the vessel or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the master or owner of the vessel or the agent thereof. If the value of the merchandise on the bill is less than $1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) shall provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b) of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. Any unentered merchandise or baggage shall remain the responsibility of the carrier, master, or person in charge of the importing vessel or the agent thereof or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry, until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond

entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of $1,000 per bill of lading under the terms and conditions of his international carrier or custodial bond (see §§ 113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(a)(1) of this chapter).

(e) In ports where there is no bonded warehouse authorized to accept general order merchandise or if merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct the storage of the merchandise by the carrier or by any other appropriate means.

(f) Whenever merchandise remains on board any vessel from a foreign port more than 25 days after the date on which report of arrival of such vessel was made, the port director, as prescribed in section 457, Tariff Act of 1930, as amended (19 U.S.C. 1457), may take possession of such merchandise and cause it to be unladen at the expense and risk of the owners of the merchandise. Any merchandise so unladen shall be sent forthwith by the port director to a general order warehouse and stored at the risk and expense of the owners of the merchandise.

(g) Merchandise taken into the custody of the port director pursuant to section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after 1 day after the day the vessel was entered, to be held there at the risk and expense of the consignee.

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for Part 18 and the specific authority citation for §§ 18.11 and 18.12 are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623.

* * * * * * *

Section 18.11 also issued under 19 U.S.C. 1484;
Section 18.12 also issued under 19 U.S.C. 1448, 1484, 1490;

* * * * * * *

2. In § 18.2(a)(1), the first sentence is amended by removing the words "any lay order period and extension thereof have expired and".

3. Section 18.11(a) is amended by removing the words "1 year" and adding, in their place, the words "6 months".

4. In § 18.12(a), the first and second sentences are amended by removing the words "1 year has" and adding, in their place, the words "6 months have".

5. Section 18.12(d) is revised to read as follows:

§ 18.12 Entry at port of destination.

* * * * * * *

(d) All merchandise included in an immediate transportation without appraisement entry (including carnets) not entered within 15 calendar days after delivery at the port of destination shall be disposed of in accordance with the applicable procedures in § 4.37 or § 122.50 or § 123.10 of this chapter.

6. Section 18.12(e) is removed.

7. Section 18.25(b) is amended by removing the reference "§ 113.62" and adding, in its place, the reference "§ 113.63".

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. Section 122.2 is amended by removing the reference "49 U.S.C. App. 1509(c)" and adding, in its place, the reference "19 U.S.C. 1644 and 1644a".

3. Section 122.49(f) is amended by removing the words "sections 440 (concerning post entry) and 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1440, 1584), apply" and adding, in their place, the words "section 584 (concerning manifest violations), Tariff Act of 1930, as amended (19 U.S.C. 1584), applies".

4. In Subpart E, § 122.50 is added to read as follows:

§ 122.50 General order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the fifteenth calendar day after landing. No later than 20 calendar days after landing, the pilot or owner of the aircraft or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the pilot or owner of the aircraft or the agent thereof. If the value of the merchandise on the bill is less than $1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calen-

dar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) shall provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b) of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. Any unentered merchandise or baggage shall remain the responsibility of the carrier, pilot, or person in charge of the importing aircraft, or the agent thereof, or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry, until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of $1,000 per bill of lading under the terms and conditions of his international carrier or custodial bond (see §§ 113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(a)(1) of this chapter).

(e) In ports where there is no bonded warehouse authorized to accept general order merchandise, or if merchandise requires specialized storage facilities that are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct

the storage of the merchandise by the carrier or by any other appropriate means.

(f) Merchandise taken into the custody of the port director pursuant to section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after 1 day after the day the aircraft arrived, to be held there at the risk and expense of the consignee.

5. In § 122.117(b)(1), the second sentence is amended by removing the words "lay order period, or an authorized extension period (see § 4.37 of this chapter)" and adding, in their place, the words "general order period (see § 122.50)".

6. In § 122.120(d)(1), the third sentence is amended by removing the words "lay order" and adding, in their place, the words "general order".

7. In § 122.161, the first sentence is amended by removing the reference "§ 122.14" and adding, in its place, the words "subpart S of this part" and by removing the reference "49 U.S.C. App. 1474" and adding, in its place, the reference "19 U.S.C. 1644 and 1644a".

8. In § 122.165, the first sentence of paragraph (a) is amended by removing the parenthetical reference "(49 U.S.C. App. 1508(b))" and adding, in its place, the parenthetical reference "(49 U.S.C. 41703)", and the second sentence of paragraph (b) is amended by removing the reference "49 U.S.C. App. 1471" and adding, in its place, the reference "49 U.S.C. Chapter 463".

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for Part 123 and the specific authority citation for § 123.8 are revised to read, and the specific authority citation for § 123.1 continues to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

Section 123.1 also issued under 19 U.S.C. 1459;

* * * * * * *

Section 123.8 also issued under 19 U.S.C. 1450–1454, 1459;

* * * * * * *

2. The specific authority citation for § 123.11 is removed.

3. In § 123.1, paragraph (a)(2) is amended by removing the words "sections 1433 or 1644 of title 19, United States Code (19 U.S.C. 1433, 1644), or section 1509 of title 49, United States Code App. (49 U.S.C. App. 1509)," and adding, in their place, the words "section 1433, 1644 or 1644a of title 19, United States Code (19 U.S.C. 1433, 1644, 1644a),".

4. In Subpart A, § 123.10 is added to read as follows:

§ 123.10 General order.

(a) Any merchandise or baggage regularly landed but not covered by a permit for its release shall be allowed to remain at the place of unlading until the fifteenth calendar day after landing. No later than 20 cal-

endar days after landing, the owner or operator of the vehicle or the agent thereof shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. Failure to provide such notification may result in assessment of a monetary penalty of up to $1,000 per bill of lading against the owner or operator of the vehicle or the agent thereof. If the value of the merchandise on the bill is less than $1,000, the penalty shall be equal to the value of such merchandise.

(b) Any merchandise or baggage that is taken into custody from an arriving carrier by any party under a Customs-authorized permit to transfer or in-bond entry may remain in the custody of that party for 15 calendar days after receipt under such permit to transfer or 15 calendar days after arrival at the port of destination. No later than 20 calendar days after receipt under the permit to transfer or 20 calendar days after arrival under bond at the port of destination, the party shall notify Customs of any such merchandise or baggage for which entry has not been made. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system. If the party fails to notify Customs of the unentered merchandise or baggage in the allotted time, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(c)(4) of this chapter).

(c) In addition to the notification to Customs required under paragraphs (a) and (b) of this section, the carrier (or any other party to whom custody of the unentered merchandise has been transferred by a Customs authorized permit to transfer or in-bond entry) shall provide notification of the presence of such unreleased and unentered merchandise or baggage to a bonded warehouse certified by the port director as qualified to receive general order merchandise. Such notification shall be provided in writing or by any appropriate Customs-authorized electronic data interchange system and shall be provided within the applicable 20-day period specified in paragraph (a) or (b) of this section. It shall then be the responsibility of the bonded warehouse proprietor to arrange for the transportation and storage of the merchandise or baggage at the risk and expense of the consignee. Any unentered merchandise or baggage shall remain the responsibility of the carrier, master, or person in charge of the importing vehicle or the agent thereof or party to whom the merchandise has been transferred under a Customs authorized permit to transfer or in-bond entry until it is properly transferred from his control in accordance with this paragraph. If the party to whom custody of the unentered merchandise or baggage has been transferred by a Customs-authorized permit to transfer or in-bond entry fails to notify a Customs-approved bonded warehouse of such merchandise or baggage within the applicable 20-calendar-day period, he may be liable for the payment of liquidated damages of $1,000 per bill of lading under the terms and conditions of his international carrier or

custodial bond (see §§ 113.63(b), 113.63(c) and 113.64(b) of this chapter).

(d) If the bonded warehouse operator fails to take possession of unentered and unreleased merchandise or baggage within five calendar days after receipt of notification of the presence of such merchandise or baggage under this section, he may be liable for the payment of liquidated damages under the terms and conditions of his custodial bond (see § 113.63(a)(1) of this chapter).

(e) In ports where there is no bonded warehouse authorized to accept general order merchandise, or if merchandise requires specialized storage facilities which are unavailable in a bonded facility, the port director, after having received notice of the presence of unentered merchandise or baggage in accordance with the provisions of this section, shall direct the storage of the merchandise by the carrier or by any other appropriate means.

(f) Merchandise taken into the custody of the port director pursuant to section 490(b), Tariff Act of 1930, as amended (19 U.S.C. 1490(b)), shall be sent to a general order warehouse after 1 day after the day the vehicle arrived, to be held there at the risk and expense of the consignee.

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

1. The authority citation for Part 127 continues to read as follows:

Authority: 19 U.S.C. 66, 1311, 1312, 1484, 1485, 1490, 1491, 1492, 1506, 1559, 1563, 1623, 1624, 1646a; 26 U.S.C. 7553.

2. Section 127.2 is amended by removing the words "1 year" wherever they appear and adding, in their place, the words "6 months" and by removing the words "1-year period" in paragraph (b) and adding, in their place, the words "6-month period".

3. In § 127.4, the second sentence is amended by removing the words "1 year" and adding, in their place, the words "6 months".

4. Section 127.11 is amended by removing the words "1 year" and adding, in their place, the words "6 months".

5. Section 127.28(d) is amended by removing the words "1 year" and adding, in their place, the words "6 months".

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The authority citation for Part 148 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 20, Harmonized Tariff Schedule of the United States).

* * * * * * *

2. In § 148.67, paragraph (b) is amended by removing the words "section 453, Tariff Act of 1930, as amended (19 U.S.C. 1453), or section 1474 of title 49, United States Code," and adding, in their place, the references "19 U.S.C. 1453 or 19 U.S.C. 1644 and 1644a".

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding new listings to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	*Description*	*OMB Control No.*
* * *	* * *	* *
§ 4.37	Notification regarding imported merchandise or baggage for which entry has not been made.	1515–0220
* * *	* * *	* *
§ 122.50	Notification regarding imported merchandise or baggage for which entry has not been made.	1515–0220
* * *	* * *	* *
§ 123.10	Notification regarding imported merchandise or baggage for which entry has not been made.	1515–0220
* * *	* * *	* *

PART 192—EXPORT CONTROL

1. The authority citation for Part 192 continues to read as follows:

Authority: 19 U.S.C. 66, 1624, 1627a, 1646a.

2. In § 192.4, the first sentence is amended by removing the reference "46 U.S.C. App. 91" and adding, in its place, the reference "19 U.S.C. 1436" and the second sentence is amended by removing the words "a liability of not more than $1,000 nor less than $500 will be incurred" and adding, in their place, the words "a liability for penalties may be incurred".

SAMUEL H. BANKS,
Acting Commissioner of Customs.

Approved: August 3, 1998.
DENNIS M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, September 25, 1998 (63 FR 51283)]

19 CFR Part 133

(T.D. 98–75)

RIN 1515–AC10

ANTICOUNTERFEITING CONSUMER PROTECTION ACT: DISPOSITION OF MERCHANDISE BEARING COUNTERFEIT AMERICAN TRADEMARKS; CIVIL PENALTIES

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by adopting final rules to implement two statutory changes contained in the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) enacted by Congress to protect consumers and American businesses from counterfeit copyrighted and trademarked products. This document addresses the public comments submitted in response to the interim regulations which initially implemented these counterfeiting provisions, and makes certain changes to those interim regulations in response to the public comments and in order to add clarity and improve the readability of the final regulations.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT:

For Entry Questions—Jerry Laderberg, Entry and Carrier Rulings Branch, (202) 927–2320, Office of Regulations and Rulings;

For Penalties and other legal Questions—Charles Ressin, Penalties Branch, (202) 927–2344, or John Atwood, Intellectual Property Rights Branch, (202) 927–2330, Office of Regulations and Rulings.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Finding that counterfeit products cost American businesses an estimated $200 billion each year worldwide, Congress enacted the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) to make sure that Federal law adequately addresses the scope and sophistication of modern counterfeiting. *See*, S.Rpt.No. 177, 104th Cong., 1st Sess. (1995), *reprinted in* [1996] 4 U.S.C.C.&A.N. 1074. On July 2, 1996, the President signed the ACPA into law (Pub.L. 104–153, 110 Stat. 1386). The ACPA was designed to provide important weapons against counterfeiters in four principal areas. First, it increases criminal penalties for counterfeiting and allows law enforcement to fight counterfeiters at the organizational level by making trafficking in counterfeit goods or services an offense under the Racketeer Influenced and Corrupt Organizations (RICO) Act, by providing increased imprisonment terms,

criminal fines, and asset forfeiture against those involved in criminal counterfeiting enterprises. Second, the legislation enhances law enforcement's ability to fight counterfeiting more effectively by increasing the involvement of all levels of law enforcement and expanding their power to seize counterfeit goods and the tools of the counterfeit trade. Third, the legislation helps stem the flow of counterfeit goods by making it easier to find imported counterfeit goods and making it more difficult for seized goods to reenter the stream of commerce. Lastly, the ACPA, in part, strengthens the hand of businesses harmed by counterfeiters by updating existing statutes and providing additional civil penalties and remedies against counterfeiters.

Section 14 of the ACPA directs the Secretary of the Treasury to prescribe such regulations or amendments to existing regulations as may be necessary to implement and enforce particular provisions of the ACPA. This document concerns sections 9 and 10 of the ACPA.

Section 9 of the ACPA pertains to government disposition of merchandise bearing American trademark information and amends section 526(e) of the Tariff Act of 1930, as amended, (19 U.S.C. 1526(e)) to ensure that counterfeits of American products are routinely destroyed, unless there is no public safety risk and the trademark owner agrees to some other disposition of the merchandise. The provisions of section 526(e) are provided for, in part, at § 133.52(c) of the Customs Regulations (19 CFR 133.52(c)).

Section 10 of the ACPA pertains to civil penalties and further amends section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) by adding a new subsection (f) that provides for civil fines on persons involved in the importation of merchandise bearing a counterfeit American trademark and are in addition to any other civil or criminal penalty or other remedy authorized by law. Since this provision is new, there were no Customs Regulations that addressed civil fines for those involved in the importation of counterfeit trademark goods.

To implement these statutory provisions as soon as possible to afford the protection legislated to trademark owners and the public from imported merchandise bearing a counterfeit trademark, on November 17, 1997, Customs published interim regulations in the Federal Register (62 FR 61231). These interim regulations amended the Customs Regulations at § 133.52(c) to implement the provisions of section 9 of the ACPA, and created a new § 133.25 to implement the provisions of section 10 of the ACPA. The document also solicited comments concerning these changes.

The comment period closed on January 16, 1998. Two comments were received. The comments and Customs responses to them follow.

Discussion of Comments

The comments received were from a professional association and a law firm representing a foreign trade association. Both commenters supported the interim regulations, with one commenter suggesting modifications. The suggested modification is discussed below.

Comment:

One commenter urged Customs to modify the text of § 133.25 concerning use of the phrase "American trademark." This commenter states that the phrase is arguably ambiguous, as it is not defined anywhere, and could lead to misunderstandings concerning the scope of the protection afforded. The commenter cites to the legislative history of the ACPA (the Act) to show that Congress intended to extend coverage of the Act to all entities, foreign as well as domestic, holding a trademark properly registered with the Patent and Trademark Office and recorded with Customs. Accordingly, the commenter recommends that Customs modify the text of this regulatory provision to provide for "counterfeit mark or name (within the meaning of § 133.21 of this part)" in lieu of the present "counterfeit American trademark."

Customs response:

Customs agrees in part with this recommendation to modify the text of § 133.25. Use of the term "American" could cause confusion regarding the scope of the protection afforded, since Congress did intend to confer protection to trademarks (whether or not owned by foreign interests) registered with the U.S. Patent Office. However, Customs does not feel that adding the additional term "name" is appropriate; it might also cause confusion, since one cannot register a trade name with the U.S. Patent Office. Accordingly, the text of § 133.25 is modified to read "counterfeit mark (within the meaning of § 133.21 of this part)" in lieu of the present "counterfeit American trademark" text.

CONCLUSION

After analysis of the comments received and further consideration of the matter, Customs has decided to adopt the interim amendments to Part 133 of the Customs Regulations with the modification discussed above in the analysis of comments. Further, to make the text of paragraphs (a) and (b) of § 133.25 read more clearly, the phrase "as determined by" in paragraph (b) is replaced with the phrase "based on" used in paragraph (a), and the term "domestic value" used in paragraph (a) is inserted in paragraph (b). Lastly, the authority citation of part 133 is revised to add a specific authority citation for new § 133.25.

INAPPLICABILITY OF THE REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Because these regulatory amendments reflect existing statutory requirements or merely implement interpretations and policies that are already in effect under interim regulations to protect trademark owners and the public from imported merchandise bearing a counterfeit trademark, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)*, it is certified that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, the regulations are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. Further, this document

does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

LIST OF SUBJECTS IN 19 CFR PART 133

Copyrights, Counterfeit goods, Customs duties and inspection, Imports, Penalties, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Seizures and forfeitures, Trademarks, Trade names, Unfair competition.

AMENDMENTS TO THE REGULATIONS

For the reasons stated above, part 133 of the Customs Regulations (19 CFR part 133), is amended as set forth below:

PART 133—TRADEMARKS, TRADE NAMES, AND COPYRIGHTS

1. The general authority citation for part 133 continues, and the specific authority for § 133.52 is revised, to read as follows:

Authority: 17 U.S.C. 101, 601, 602, 603; 19 U.S.C. 66, 1624; 31 U.S.C. 9701;

* * * * * * *

Sections 133.25 and 133.52 also issued under 19 U.S.C. 1526;

* * * * * * *

2. Section 133.25 is revised to read as follows:

§ 133.25 Civil fines for those involved in the importation of counterfeit trademark goods.

In addition to any other penalty or remedy authorized by law, Customs may impose a civil fine on any person who directs, assists financially or otherwise, or aids and abets the importation of merchandise bearing a counterfeit mark (within the meaning of §133.21 of this part) as follows:

(a) *First violation*. For the first seizure of such merchandise, the fine imposed shall not be more than the domestic value of the merchandise (*see*, § 162.43(a) of this chapter) as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure.

(b) *Second and subsequent violations*. For the second and each subsequent seizure of such merchandise, the fine imposed shall not be more than twice the domestic value of the merchandise as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure.

3. Section 133.52(c) is republished to read as follows:

§ 133.52 Disposition of forfeited merchandise.

* * * * * * *

(c) *Articles bearing a counterfeit trademark*. Merchandise forfeited for violation of 19 U.S.C. 1526 shall be destroyed, unless it is determined that the merchandise is not unsafe or a hazard to health and the Com-

missioner of Customs or his designee has the written consent of the U.S. trademark owner, in which case the Commissioner of Customs or his designee may dispose of the merchandise, after obliteration of the trademark where feasible, by:

(1) Delivery to any Federal, State, or local government agency that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(2) Gift to any charitable institution that, in the opinion of the Commissioner or his designee, has established a need for the merchandise; or

(3) Sale at public auction, if more than 90 days has passed since the forfeiture and Customs has determined that no need for the merchandise has been established under paragraph (c)(1) or (c)(2) of this section.

SAMUEL H. BANKS,
Acting Commissioner of Customs.

Approved: August 3, 1998.

DENNIS M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, September 25, 1998 (63 FR 51296)]

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19 CFR Parts 10 and 178

(T.D. 98–76)

RIN 1515–AB59

ANDEAN TRADE PREFERENCE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without any changes, proposed amendments to the Customs Regulations to implement the duty preference provisions of the Andean Trade Preference Act (the Act). The final regulatory texts set forth the country of origin and related rules which apply for purposes of duty-free or reduced-duty treatment on imported goods under the Act and specify the documentary and other procedural requirements which apply to any claim for such preferential tariff treatment under the Act.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT:

Operational Aspects: Tony Mazzoccoli, Office of Field Operations (202–927–0564).

Legal Aspects: Craig Walker, Office of Regulations and Rulings (202–927–1116).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 4, 1991, President Bush signed into law the Andean Trade Preference Act (Public Law 102–182, Title II, §§ 201–206, 105 Stat. 1236–1244) ("the Act", commonly referred to as the ATPA), the provisions of which are codified at 19 U.S.C. 3201 through 3206. Sections 202 and 204(c) of the Act (19 U.S.C. 3201 and 3203(c)) authorize the President to proclaim duty-free treatment for all eligible articles, and duty reductions for certain other goods, from any country designated by the President as a beneficiary country pursuant to section 203 of the Act (19 U.S.C. 3202). On July 2, 1992, President Bush signed Proclamation 6455 (57 FR 30069) which (1) proclaimed the duty treatment authorized by the Act, (2) designated Colombia as a beneficiary country for purposes of the Act, and (3) modified the Harmonized Tariff Schedule of the United States (HTSUS) to incorporate the substance of the relevant provisions of the Act; under the terms of the proclamation, the proclaimed duty treatment was effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 22, 1992. On the same date President Bush signed Proclamation 6456 (57 FR 30097) designating Bolivia as a beneficiary country for purposes of the Act, similarly effective July 22, 1992. On April 13, 1993, President Clinton signed Proclamation 6544 (58 FR 19547) which, among other things, designated Ecuador as a beneficiary country for purposes of the Act, effective April 30, 1993. On August 11, 1993, President Clinton signed Proclamation 6585 (58 FR 43239) designating Peru as a beneficiary country for purposes of the Act, effective August 26, 1993. The modifications to the HTSUS contained in Proclamation 6455 setting forth the substance of the relevant provisions of the Act are now contained in General Note 11, HTSUS, and eligible articles and other goods to which preferential duty treatment under the Act applies are identified within the HTSUS by the designation "J" appearing with or without an asterisk in the "Special" rate of duty subcolumn.

Sections 204(a)–(c) of the Act (19 U.S.C. 3203(a)–(c)) set forth the standards which govern the eligibility of articles for duty-free or reduced-duty treatment under the Act. Section 204(a), which contains the basic origin and related rules for purposes of duty-free treatment, was based on section 213(a) of the Caribbean Basin Economic Recovery Act, as amended (19 U.S.C. 2703(a)), which sets forth the origin and related rules governing duty-free treatment under the Caribbean Basin Initiative (CBI). Thus, in order to be eligible for duty-free treatment under the Act, an article imported from a designated beneficiary country must meet three basic requirements: (1) it must be imported directly from a beneficiary country into the customs territory of the United States; (2) it must have its origin in a beneficiary country, that is, it either must be wholly the growth, product, or manufacture of a beneficiary country or must be a new or different article of commerce that has been grown, produced, or manufactured in a beneficiary country; and (3) it must

have a minimum domestic value content, that is, at least 35 percent of its appraised value must be attributed to the sum of the cost or value of materials produced in one or more beneficiary countries plus the direct costs of processing operations performed in one or more beneficiary countries. The provisions of section 204(a) of the Act further parallel the provisions of section 213(a) of the CBI statute in the following regards: (1) simple combining or packaging operations or mere dilution with water or another substance does not confer beneficiary country origin on an imported article or on a constituent material of an imported article; (2) the term "beneficiary country" is defined as including the Commonwealth of Puerto Rico and the U.S. Virgin Islands for purposes of determining compliance with the 35 percent value content requirement; (3) the cost or value of materials produced in the customs territory of the United States (other than in Puerto Rico) may be counted toward the 35 percent value content requirement to a maximum of 15 percent of the appraised value of the imported article; and (4) the expression "direct costs of processing operations" is defined in the same manner. However, the origin and related rules of section 204(a) of the Act differ from the corresponding provisions in section 213(a) of the CBI statute in two principal respects: (1) section 204(a) of the Act specifically allows input attributable to one or more CBI beneficiary countries for purposes of the 35 percent value content requirement (the corresponding CBI statutory provision makes no mention of input attributable to beneficiary countries under the Act); and (2) section 204(a) of the Act has no provision corresponding to section 213(a)(4) of the CBI statute which was added to facilitate the addition of value to an article in Puerto Rico and the granting of duty-free treatment after final exportation of an article from a CBI beneficiary country. Section 204(b) of the Act lists eight categories of goods excluded from the duty-free treatment provided for in section 204(a), one of which refers to articles to which reduced rates of duty apply under section 204(c) of the Act. Section 204(c) directs the President to proclaim reductions in the rates of duty on handbags, luggage, flat goods, work gloves and leather wearing apparel that: (1) are the product of any beneficiary country; and (2) were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences (GSP) under Title V of the Trade Act of 1974 (19 U.S.C. 2461–2466). These reduced duty rates, which were generally implemented in equal annual stages over a 5-year period (commencing in 1992 and ending in 1996), appear in the HTSUS in the "Special" rate of duty subcolumn followed by the symbol "J" within parentheses.

Section 204(a)(2) of the Act directed the Secretary of the Treasury to promulgate such regulations as may be necessary to carry out the duty-free treatment provisions of the Act. Accordingly, on January 30, 1998, Customs published in the Federal Register (63 FR 4601) a proposal to add §§ 10.201 through 10.208 within Part 10 of the Customs Regulations (19 CFR Part 10) to implement the duty preference provisions of

the Act. In view of the similarity between the origin and related rules under the Act and those under the CBI, the texts set forth in the January 30, 1998, notice of proposed rulemaking closely followed the CBI regulations contained in §§ 10.191–10.198 of the Customs Regulations (19 CFR 10.191–10.198) except where statutory differences or editorial considerations warranted a variance from the CBI approach.

The January 30, 1998, notice included a detailed, section-by-section explanation of the proposed new regulatory texts and made provision for the submission of public comments on the proposed texts for consideration before adoption of those texts as a final rule. The prescribed public comment period closed on March 31, 1998, and no comments on the proposed new regulatory texts were received by Customs during that comment period. Accordingly, Customs believes that the proposed texts should be adopted as a final rule without change. The final regulatory amendments set forth in this document also include an appropriate update of the list of information collection approvals contained in § 178.2 of the Customs Regulations (19 CFR 178.2).

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments reflect statutory requirements that are already in effect and follow existing regulatory provisions that implement similar statutory programs. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

PAPERWORK REDUCTION ACT

The collection of information contained in this final rule has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1515–0219. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

The collection of information in this final rule is in § 10.207. This information conforms to requirements in 19 U.S.C. 3203(a) and is used by Customs to determine whether goods imported from designated beneficiary countries are entitled to duty-free entry under that statutory provision. The likely respondents are business organizations including importers, exporters, and manufacturers.

The estimated average annual burden associated with the collection of information in this final rule is 2 minutes per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300

Pennsylvania Avenue, N.W., Washington, D.C. 20229, and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 10

Andean trade preference, Customs duties and inspection, Entry procedures, Imports.

19 CFR Part 178

Administrative practice and procedure, Recordkeeping and reporting requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, Parts 10 and 178, Customs Regulations (19 CFR Parts 10 and 178), are amended as set forth below.

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, and a specific authority citation for §§ 10.201 through 10.207 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * * * *

§§ 10.201 through 10.207 also issued under 19 U.S.C. 3203.

2. Part 10 is amended by adding a new center heading followed by new §§ 10.201 through 10.208 to read as follows:

ANDEAN TRADE PREFERENCE

Sec.

ANDEAN TRADE PREFERENCE

§ 10.201 Applicability.

Title II of Public Law 102–182 (105 Stat. 1233), entitled the Andean Trade Preference Act (ATPA) and codified at 19 U.S.C. 3201–3206, au-

thorizes the President to proclaim duty-free treatment for all eligible articles from any beneficiary country, to designate countries as beneficiary countries, and to proclaim duty reductions for certain goods not eligible for duty-free treatment. The provisions of §§ 10.202–10.208 of this part set forth the legal requirements and procedures that apply for purposes of obtaining such duty-free or reduced-duty treatment for articles from a beneficiary country which are identified for purposes of such treatment in General Note 11, Harmonized Tariff Schedule of the United States (HTSUS), and in the "Special" rate of duty column of the HTSUS.

§ 10.202 Definitions.

The following definitions apply for purposes of §§ 10.201 through 10.208:

(a) *Beneficiary country.* Except as otherwise provided in § 10.206(b), the term "beneficiary country" refers to any country or successor political entity with respect to which there is in effect a proclamation by the President designating such country or successor political entity as a beneficiary country in accordance with section 203 of the ATPA (19 U.S.C. 3202).

(b) *Eligible articles.* The term "eligible" when used with reference to an article means merchandise which is imported directly from a beneficiary country as provided in § 10.204, which meets the country of origin criteria set forth in § 10.205 and the value-content requirement set forth in § 10.206, and which, if the requirements of § 10.207 are met, is therefore entitled to duty-free treatment under the ATPA. However, the following merchandise shall not be considered eligible articles entitled to duty-free treatment under the ATPA:

(1) Textile and apparel articles which are subject to textile agreements;

(2) Footwear not designated on December 4, 1991, as eligible for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461–2466);

(3) Tuna, prepared or preserved in any manner, in airtight containers;

(4) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710, Harmonized Tariff Schedule of the United States (HTSUS);

(5) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if such watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply;

(6) Sugars, syrups, and molasses classified in subheadings 1701.11.03, 1701.12.02, 1701.99.02, 1702.90.32, 1806.10.42, and 2106.90.12, HTSUS;

(7) Rum and tafia classified in subheading 2208.40.00, HTSUS; or

(8) Articles to which reduced rates of duty apply under section 204(c) of the ATPA (19 U.S.C. 3203(c)) (see § 10.208).

(c) *Entered.* The term "entered" means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(d) *Wholly the growth, product, or manufacture of a beneficiary country.* The expression "wholly the growth, product, or manufacture of a beneficiary country" has the same meaning as that set forth in § 10.191(b)(3) of this part.

§ 10.203 Eligibility criteria in general.

An article classifiable under a subheading of the Harmonized Tariff Schedule of the United States for which a rate of duty of "Free" appears in the "Special" subcolumn followed by the symbol "J" or "J*" in parentheses is eligible for duty-free treatment, and will be accorded such treatment, if each of the following requirements is met:

(a) *Imported directly.* The article is imported directly from a beneficiary country as provided in § 10.204.

(b) *Country of origin criteria.* The article complies with the country of origin criteria set forth in § 10.205.

(c) *Value content requirement.* The article complies with the value content requirement set forth in § 10.206.

(d) *Filing of claim and submission of supporting documentation.* The claim for duty-free treatment is filed, and any required documentation in support of the claim is submitted, in accordance with the procedures set forth in § 10.207.

§ 10.204 Imported directly.

In order to be eligible for duty-free treatment under the ATPA, an article shall be imported directly from a beneficiary country into the customs territory of the United States. For purposes of this requirement, the words "imported directly" mean:

(a) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country; or

(b) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country, the articles in the shipment did not enter into the commerce of the non-beneficiary country while en route to the United States, and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(c) If shipment from any beneficiary country to the United States was through the territory of a non-beneficiary country and the invoices and other documents do not show the United States as the final destination, then the articles in the shipment, upon arrival in the United States, are imported directly only if they:

(1) Remained under the control of the customs authority in the intermediate country;

(2) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the articles are imported into the United States as a result of the original commercial transaction between the importer and the producer or the latter's sales agent; and

(3) Were not subjected to operations in the intermediate country other than loading and unloading, and other activities necessary to preserve the articles in good condition.

§ 10.205 Country of origin criteria.

(a) *General.* Except as otherwise provided in paragraph (b) of this section, an article may be eligible for duty-free treatment under the ATPA if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) *Exceptions.* No article shall be eligible for duty-free treatment under the ATPA by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The principles and examples set forth in § 10.195(a)(2) of this part shall apply equally for purposes of this paragraph.

§ 10.206 Value content requirement.

(a) *General.* An article may be eligible for duty-free treatment under the ATPA only if the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(b) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term "beneficiary country" includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1) of this part. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from a beneficiary country as defined in § 10.202(a).

(c) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(1) of this section shall apply in determining whether a material is

"produced in the customs territory of the United States" for purposes of this paragraph.

(d) *Cost or value of materials.*

(1) *"Materials produced in a beneficiary country or countries" defined.* For purposes of paragraph (a) of this section, the words "materials produced in a beneficiary country or countries" refer to those materials incorporated in an article which are either:

(i) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or

(ii) Substantially transformed in any beneficiary country or two or more beneficiary countries into a new or different article of commerce which is then used in any beneficiary country as defined in § 10.202(a) in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(1)(ii), no material shall be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a) of this part, and the principles and examples set forth in § 10.195(a)(2) of this part, shall apply for purposes of the corresponding context under paragraph (d)(1) of this section.

(2) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate port director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country or in the customs territory of the United States.

(3) *Determination of cost or value of materials.*

(i) The cost or value of materials produced in a beneficiary country or countries or in the customs territory of the United States includes:

(A) The manufacturer's actual cost for the materials;

(B) When not included in the manufacturer's actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer's plant;

(C) The actual cost of waste or spoilage, less the value of recoverable scrap; and

(D) Taxes and/or duties imposed on the materials by any beneficiary country or by the United States, provided they are not remitted upon exportation.

(ii) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

(A) All expenses incurred in the growth, production, or manufacture of the material, including general expenses;

(B) An amount for profit; and

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(iii) If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

(e) *Direct costs of processing operations.*

(1) *Items included.* For purposes of paragraph (a) of this section, the words "direct costs of processing operations" mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(iv) Costs of inspecting and testing the specific merchandise.

(2) *Items not included.* For purposes of paragraph (a) of this section, the words "direct costs of processing operations" do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries, casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(f) *Articles wholly the growth, product, or manufacture of a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country as defined in § 10.202(a), and any article produced or manufactured in a beneficiary country as defined in § 10.202(a) exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirement set forth in paragraph (a) of this section.

§ 10.207 Procedures for filing duty-free treatment claim and submitting supporting documentation.

(a) *Filing claim for duty-free treatment.* Except as provided in paragraph (c) of this section, a claim for duty-free treatment under the ATPA may be made at the time of filing the entry summary by placing

the symbol "J" as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which duty-free treatment is claimed on that document.

(b) *Shipments covered by a formal entry.*

(1) *Articles not wholly the growth, product, or manufacture of a beneficiary country.*

(i) *Declaration.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is not wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), the exporter or other appropriate party having knowledge of the relevant facts in the beneficiary country as defined in § 10.202(a) where the article was produced or last processed shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the port director, the declaration shall be prepared in substantially the following form:

ATPA DECLARATION

I, _____ (name), hereby declare that the articles described below (a) were produced or manufactured in _____ (country) by means of processing operations performed in that country as set forth below and were also subjected to processing operations in the other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) as set forth below and (b) incorporate materials produced in the country named above or in any other beneficiary country or countries (including the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country) or in the customs territory of the United States (other than the Commonwealth of Puerto Rico) as set forth below:

Number and date of invoices	Description of articles and quantity	Processing operations performed on articles		Material produced in a beneficiary country or in the U.S.	
		Description of processing operations and country of processing	Direct costs of processing operations	Description of material, production process, and country of processing	Cost or value of material

Date _____
Address _____
Signature _____
Title _____

(ii) *Retention of records and submission of declaration.* The information necessary for the preparation of the declaration shall be retained in the files of the party responsible for its preparation and submission for a period of 5 years. In the event that the port director requests submission of the declaration during the 5-year period, it shall be submitted by the appropriate party directly to the port director within 60 days of the date of the request or such additional period as the port director may allow for good cause shown. Failure to submit the declaration in a timely fashion will result in a denial of duty-free treatment.

(iii) *Value added after final exportation.* In a case in which value is added to an article in the Commonwealth of Puerto Rico or in the United States after final exportation of the article from a beneficiary country as defined in § 10.202(a), in order to ensure compliance with the value requirement under § 10.206(a), the declaration provided for in paragraph (b)(1)(i) of this section shall be filed by the importer or consignee with the entry summary. The declaration shall be completed by the party responsible for the addition of such value.

(2) *Articles wholly the growth, product, or manufacture of a beneficiary country.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is wholly the growth, product, or manufacture of a single beneficiary country as defined in § 10.202(a), a statement to that effect shall be included on the commercial invoice provided to Customs.

(c) *Shipments covered by an informal entry.* The normal procedure for filing a claim for duty-free treatment as set forth in paragraph (a) of this section need not be followed, and the filing of the declaration provided for in paragraph (b)(1)(i) of this section will not be required, in a case involving a shipment covered by an informal entry. However, the port director may require submission of such other evidence of entitlement to duty-free treatment as deemed necessary.

(d) *Evidence of direct importation.*

(1) *Submission.* The port director may require that appropriate shipping papers, invoices, or other documents be submitted within 60 days of the date of entry as evidence that the articles were "imported directly", as that term is defined in § 10.204.

(2) *Waiver.* The port director may waive the submission of evidence of direct importation when otherwise satisfied, taking into consideration the kind and value of the merchandise, that the merchandise was, in fact, imported directly and that it otherwise clearly qualifies for duty-free treatment under the ATPA.

(e) *Verification of documentation.* The documentation submitted under this section to demonstrate compliance with the requirements for duty-free treatment under the ATPA shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as fully dutiable.

§ 10.208 Duty reductions for certain products.

(a) *General.* Handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461–2466), are not eligible for duty-free treatment under the ATPA. However, any such article from a beneficiary country may be subject to a reduced rate of duty set forth in the Harmonized Tariff Schedule of the United States in the applicable "Special" subcolumn followed by the symbol "J" in parenthesis, provided the article is a product of any beneficiary country. For purposes of this section, an article is a "product of" a beneficiary country if the article is either:

(1) Wholly the growth, product, or manufacture of a beneficiary country; or

(2) A new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country.

(b) *Filing reduced-duty claim.* A claim for reduced-duty treatment under the ATPA may be made at the time of filing the entry summary or other entry document by placing thereon the symbol "J" as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which reduced-duty treatment is claimed and by placing thereon the reduced duty rate applicable to each such article.

(c) *Verification of reduced-duty claim.* Any claim for reduced-duty treatment under this section shall be subject to such verification as the port director deems necessary. In the event that the port director is prevented from obtaining the necessary verification, the port director may treat the entry as dutiable at the applicable non-ATPA rate.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing to the table in numerical order to read as follows:

§ 178.2 Listing of OMB control numbers.

19 CFR Section	*Description*	*OMB Control No.*
* * *	* *	* *
§ 10.207	Claim for duty-free entry of eligible articles under the Andean Trade Preference Act.	1515–0219
* * *	* *	* *

DOUGLAS M. BROWNING,
Acting Commissioner of Customs.

Approved: August 31, 1998.
JOHN P. SIMPSON,
Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, September 25, 1998 (63 FR 51291)]

(T.D. 98–77)

RETRACTION OF REVOCATION NOTICE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice

SUMMARY: The following Customs broker license numbers were erroneously included in a published list of revoked Customs brokers licenses in the Federal Register.

Broker	*License No.*
Ronald G. Sleeis	05092
Alpha Brokers Corp.	12296

Licenses 05092 and 12296 are valid licenses.

Dated: September 23, 1998.

PHILIP METZGER,
Director,
Trade Compliance.

[Published in the Federal Register, September 30, 1998 (63 FR 52316)]

(T.D. 98–78)

RETRACTION OF REVOCATION NOTICE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: The following Customs broker license numbers were erroneously included in a published list of revoked Customs brokers licenses in the Federal Register.

Broker	*Port*	*License No.*
Jonathan P. Beck	Baltimore	10436
Joseph P. Moss	Baltimore	09889
Marla Bernstein	Boston	14836
Hankyu Int'l Transport (USA) Inc.	San Francisco	04497
Todd Hinkle	Chicago	13098
John R. Wainwright	Chicago	14002
Michael Mckenna	Miami	09612
Alfreco Rodriguez	Miami	11724
Richard Schweitzer	Miami	06169

Licenses 10436, 09889, 14836, 04497, 13098, 14002, 09612, 11724, and 06169 are valid licenses.

Dated: September 23, 1998.

PHILIP METZGER,
Director,
Trade Compliance.

[Published in the Federal Register, September 30, 1998 (63 FR 52316)]

U.S. Customs Service

General Notices

COUNTRY OF ORIGIN MARKING RULES FOR TEXTILES AND TEXTILE PRODUCTS ADVANCED IN VALUE, IMPROVED IN CONDITION, OR ASSEMBLED ABROAD

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Proposed interpretation; extension of comment period.

SUMMARY: On June 15, 1998, a document was published in the Federal Register advising the public that Customs is proposing a new interpretation concerning the country of origin rules for certain imported textile and textile products. Customs proposed that 19 CFR 12.130(c) should not control for purposes of country of origin marking of textile and textile products, and that Chapter 98, Subchapter II, U.S. Note 2(a), Harmonized Tariff Schedule of the United States does not apply for country of origin marking purposes. The document solicited comments, requesting that comments be received on or before August 14, 1998. A document extending the period of time until September 30, 1998, for interested members of the public to submit comments on the proposal was published in the Federal Register on July 24, 1998. This document further extends the comment period.

DATES: Comments must be received on or before December 18, 1998.

ADDRESSES: Written comments may be addressed to, and inspected at, the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Monika Brenner, Special Classification and Marking Branch, Office of Regulations and Rulings, (202) 927–1675.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A document was published in the Federal Register (63 FR 32697) on June 15, 1998, advising the public that Customs is proposing a new interpretation concerning the country of origin rules for certain imported textile and textile products. Customs proposed that 19 CFR

12.130(c) should not control for purposes of country of origin marking of textile and textile products, and that Chapter 98, Subchapter II, U.S. Note 2(a), Harmonized Tariff Schedule of the United States does not apply for country of origin marking purposes. The document solicited comments, requesting that comments be received on or before August 14, 1998.

On July 24, 1998, Customs published a document in the Federal Register (63 FR 39931) extending the comment period until September 30, 1998.

Customs has now received a request to further extend the comment period to allow interested parties to have more time to consider the proposal and to explore how the proposed changes may impact the FTC rules on "Made in USA". Customs believes the request for more time has merit. Accordingly, the period of time for submission of comments is being extended until December 18, 1998.

All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days at the address stated above.

Dated: September 25, 1998.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

[Published in the Federal Register, September 30, 1998 (63 FR 52316)]

PROPOSED COLLECTION; COMMENT REQUEST

COMMERCIAL INVOICES

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burdens, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Commercial Invoices. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 24, 1998, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2–C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2–C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Commercial Invoices

OMB Number: 1515–0120

Form Number: N/A

Abstract: The collection of Commercial Invoices is necessary for the proper assessment of Customs duties. The invoice(s) is attached to the CF7501. The information which is supplied by the foreign shipper is used to ensure compliance with statues and regulations.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 350,000

Estimated Time Per Respondent: 10 seconds

Estimated Total Annual Burden Hours: 84,000

Estimated Total Annualized Cost on the Public: $1,201,200.00

Dated: September 17, 1998.

J. EDGAR NICHOLS,
Team Leader,
Information Services Group.

[Published in the Federal Register, September 25, 1998 (63 FR 51400)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 23, 1998.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF THE IRON ALLOY POWDER "WELLMAX NS–3"

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of the iron alloy powder "Wellmax NS–3" under the Harmonized Tariff Schedule of the United States (Annotated) (HTSUSA). Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before November 6, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Michael McManus, General Classification Branch, (202) 927–2346.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Moderniza-

tion) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of the iron alloy powder "Wellmax NS–3."

In NY A88776, issued November 18, 1996, Customs ruled that "Wellmax NS–3" was classified in subheading 3824.90.90, HTSUS, the residual provision for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included." NY A88776 is set forth as Attachment A to this document.

Upon review of this ruling, Customs has discovered an error in the classification of "Wellmax NS–3." Classification as a product or preparation of the chemical or allied industries, not elsewhere specified or included, is appropriate only where the merchandise does not fall under any other heading. As explained in proposed Headquarters Ruling Letter (HQ) 961028, set forth as "Attachment B" to this document, this product may be classified in subheading 7205.21.00, HTSUS, as a powder of alloy steel. Thus, "Wellmax NS–3" is excluded from subheading 3824.90.90, HTSUS.

Customs intends to revoke NY A88776 to reflect the proper classification of "Wellmax NS–3" alloy steel powder. Before taking this action, we will give consideration to any written comments timely received.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: September 17, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, November 18, 1996.

CLA–2–38:RR:NC:2:239 A88776
Category: Classification
Tariff No. 3824.90.9050

MR. ROBERT O. KECHIAN
NNR AIRCARGO SERVICE (USA) INC.
Hook Creek Blvd. & 145th Ave.
Unit C–1A
Valley Stream, NY 11581

Re: The tariff classification of Wellmax NS–3 from Japan.

DEAR MR. KETCHIAN:

In your letter dated October 21, 1996, on behalf of your client Nissho Iwai American Corporation, you requested a tariff classification ruling for Wellmax NS–3 which you have stated is a product that enables flexibly designed magnetic circuits and is utilized in a wide range of applications such as small size motors for various purposes. The chemical composition is as follows: neodymium, boron, iron, cobalt, and polyphenylenesulfide.

The applicable subheading will be 3824.90.9050, Harmonized Tariff Schedule of the United States (HTS), which provides for prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included: other. The rate of duty will be 5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Thomas Brady at 212–466–5747.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 961028 MGM
Category: Classification
Tariff No. 7205.21.00

MR. ROBERT O. KECHIAN
NNR AIRCARGO SERVICE (USA) INC.
Hook Creek Blvd. & 145th Ave.
Unit C–1A
Valley Stream, NY 11581

Re: Wellmax NS–3; Revocation of NY A88776.

DEAR SIR:

This is in response to your letter of February 10, 1997, on behalf of Nissho Iwai American Corporation, requesting reconsideration of New York Ruling Letter (NY) A88776, issued to you on November 18, 1996, concerning the classification of Wellmax NS–3 powder under the Harmonized Tariff Schedule of the United States (HTSUS). We have determined that

the ruling is in error. Therefore, this ruling revokes NY A88776 and sets forth the correct clasification of Wellmax NS–3 powder. In preparing this decision, consideration was given to correspondence submitted on August 17, 1998, and September 9, 1998.

Facts:

The product in question is Wellmax NS–3 powder, which is a combination of magnaquench crushed ribbon (isotropic powder) (MQ), composed of neodymium, iron, boron, and other minor constituents, and polyphenylene sulfide. The starting materials to make the MQ powder are neodymium oxide and fluoride which are processed to yield a neodymium-iron eutectic material. This material is then combined with ferroboron, cobalt, and other elements in an inert atmosphere-controlled alloy furnace. The alloy is melted and ejected onto a chilled rotating wheel in a jet cast process causing a rapid solidification process which produces flakes of neodymium-iron-boron (NdFeB). These flakes are crushed to form MQ powder. This MQ powder is then combined with polyphenylene sulfide at a ratio of 85%:15% to make Wellmax NS–3. This product consists of 22–28% neodymium, 0.8% boron, >35% iron, <18% cobalt, .09% carbon, and 10–15% polyphenylene sulfide. It is used to form bonded magnets with an injection molding machine.

Customs Laboratory Report 2–97–21735–001, dated July 2, 1997, states that Wellmax NS–3 powder is "a mixture of metal alloy powder and over 5% aromatic resin."

In NY A88776, Customs ruled that Wellmax NS–3 was classified in subheading 3824.90.9050, HTSUS, the residual provision for "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included."

Issue:

Whether Wellmax NS–3 is classified in subheading, 3824.90.9050, HTSUS.

Law and Analysis:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See,* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

In NY A88776, "Wellmax NS–3" was classified in subheading 3824.90.90, HTSUS, as a chemical product or preparation of the chemical or allied industries, not elsewhere specified or included. This classification is appropriate only where the merchandise does not fall under any other tariff heading. As this product is included within subheading 7205.21.00, HTSUS, it is excluded from subheading 3824.90.90, HTSUS.

Note 5 to Section XV, HTSUS, governs the classification of alloys, however, ferroalloys are excepted from Note 5. Ferroalloys are "commonly used as an additive in the manufacture of other alloys or as deoxidants, desulphurising agents or for similar uses in ferrous metallurgy." Note 1(c), Chapter 72, HTSUS. Customs Laboratory Report 2–97–21735–001, dated July 2, 1997, states that "the importer claims the product is to be used 'as is' with no further additives to manufacture to magnets by injection molding." In addition, an advertising brochure describes Wellmax NS–3 as a product that enables flexibly designed magnetic circuits and is utilized in a wide range of applications such as small size motors for various purposes. Since this mixture of metal alloy powder and over 5% aromatic resin is not commonly used as an additive in the manufacture of other alloys or as otherwise set forth in Note 1(c), Chapter 72, HTSUS, it is not a ferroalloy for tariff classification purposes. This is consistent with HQ 557528, dated December 17, 1993. It remains,

however, an "alloy" for purposes of tariff classification as set forth in Note 5, Section XV, HTSUS.

Note 5(b) to Section XV states that "An alloy composed of base metals of this section and of elements not falling within this section is to be treated as an alloy of base metals of this section if the total weight of such metals equals or exceeds the total weight of the other elements present." The term "base metals" includes steel, iron, and cobalt. Note 3, Section XV. Here, the combined weight of iron and cobalt constitutes greater than 50 percent of the alloy and necessarily exceeds that of component compounds other than base metals. Therefore, Wellmax NS–3 is an alloy of base metals of Section XV of the HTSUS.

An alloy of base metals of Section XV is to be classified as an alloy of the metal which predominates by weight over each of the other metals. Note 5(a), Section XV. Steels are defined as ferrous materials which "are usefully malleable and which contain by weight 2 percent or less of carbon." Note 1(d), Chapter 72. Steel predominates by weight over the other base metals, thus this product is a steel alloy. "Other alloy steel" is a steel which is not stainless steel (1.2 percent or less of carbon and 10.5 percent or more of chromium) and which contains a specific quantum of any of several other elements. Note 1(f), Chapter 72. This merchandise is not stainless steel as the chromium content is less than 10.5 percent, however it does contain sufficient boron and cobalt to be considered an "other alloy steel."

Any reference to a base metal includes a reference to alloys which, by virtue of Note 5, Section XV, are to be classified as alloys of that metal. Note 6, Section XV. Thus, the term "steel," in the HTSUS, includes Wellmax NS–3.

Heading 7205, HTSUS, provides as follows:

7205	Granules and powders, of pig iron, spiegeleisen, iron or steel:
7205.10.0000	Granules
	Powders:
7205.21.0000	Of alloy steel
7205.29.0000	Other.

A powder is a product of which 90% or more by weight passes through a sieve having a mesh aperture of 1 mm (.001 meters). Note 8, Section XV. The advertising brochure for this product states that the mean particle size is 15–30 μm (.000015–.000030 meters). Since the aperture through which a particle must pass to be considered a powder is much larger than this product, it can be assumed that it would pass through unhindered and is therefore considered a powder rather than a granule.

Holding:

Wellmax NS–3 powder is classified in subheading 7205.21.0000, HTSUS.

NY A88776 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTER RELATING TO TARIFF CLASSIFICATION OF MIXTURES OF AMINO ACIDS USED AS NUTRITIONAL SUPPLEMENTS IN ANIMAL FEED

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of tariff classification ruling letter.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of mixtures of amino acids used as nutritional supplements for horses, imported in bulk, under the Harmonized Tariff Schedule of the United States (HTSUS). Comments are invited on the correctness of the proposed ruling.

DATE: Comments must be received on or before November 6, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Michael McManus, General Classification Branch, (202) 927–2346.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of mixtures of amino acids used as nutritional supplements in animal feed.

These mixtures of amino acids are sold for use as nutritional supplements for horses. Amino acids are capable of polymerizing to form long chains known as proteins. Proteins play a wide variety of structural and functional roles in biological systems. They form the primary basis of hair, tendons, muscle, skin, and cartilage. Enzymes (biological catalysts) are proteins. In addition, many hormones, such as insulin and growth hormone, are proteins. *McGraw-Hill Multimedia Encyclopedia of Science & Technology.* The merchandise is imported in bulk form.

In NY 864727, dated July 19, 1991, Customs ruled that amino acid mixtures known as "Ta Chuang," "Hsieh," "Feng," "Ta Ch'u," and

"Sheng" were classified in subheading 3823.90.5050, HTSUS, the residual provision for chemical products and preparations of the chemical or allied industries. The analogous provision in the 1998 tariff schedule is subheading 3824.90.9050, HTSUS. NY 864727 is set forth as Attachment A to this document.

Upon review of this ruling Customs has determined that the above classification is in error. This product should be classified in heading 2309, HTSUS, the provision for "Preparations of a kind used in animal feeding."

Harmonized Commodity Description and Coding System Explanatory Note (EN) 23.09 states that "This heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed: * * * (3) for use in making complete or supplementary feeds." EN 23.09 (II) (C) lists amino acids among "Preparations for use in making the complete feeds or supplementary feeds." Thus, a mixture of amino acids used as a nutritional supplement to the equine diet is classified in this heading. At the six-digit subheading level, this product will be classified in subheading 2309.90, HTSUS, as it is not dog or cat food. Within 2309.90, items are classified as "Mixed feeds or mixed feed ingredients" or "Other." "The term 'mixed feeds and mixed-feed ingredients' in subheading 2309.90.10 embraces products of heading 2309 which are admixtures of grains (or products, including byproducts, obtained in milling grains) with molasses, oilcake, oil-cake meal or feedstuffs, and which consist of not less than 6 percent by weight of grain or grain products." Additional U.S. Note 1, Chapter 23. As this merchandise does not contain six percent grain or grain products by weight, it is "other" than "mixed feeds or mixed-feed ingredients." Of the remaining subheadings, the merchandise is best classified in subheading 2309.90.9500, HTSUS, the residual provision, as it is not described by any of the more specific provisions.

Customs proposes to revoke NY 864727 to reflect the proper classification of mixtures of amino acids used as nutritional supplements for horses, imported in bulk. Proposed Headquarters Ruling Letter (HQ) 962012 revoking NY 864727 is set forth as Attachment B to this document.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions occurring on or after the date of publication of this notice.

Dated: September 17, 1998.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, July 19, 1991.

CLA–2–38:S:N:N1:235 864727
Category: Classification
Tariff No. 3823.90.5050

MS. LISA A. LOCICERO
HEARTLAND FARMS, INC.
96 Sycamore Gardens
New Windsor, NY 12553

Re: The tariff classification of Ta Chuang, Hseih, Feng, Ta Ch'u and Sheng powders from Australia.

DEAR MS. LOCICERO:

In your letter dated June 27, 1991, you requested a tariff classification ruling.

According to your letter, all the above products are mixtures of amino acids only and are designed as nutritional supplements for horses.

The applicable subheading for all the products mentioned above will be 3823.90.5050, Harmonized Tariff Schedule of the United States (HTS), which provides for chemical mixture not elsewhere provided for. The rate of duty will be 5 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 962012 MGM
Category: Classification
Tariff No. 2309.90.9500

MS. LISA A. LOCICERO
HEARTLAND FARMS, INC.
96 Sycamore Gardens
New Windsor, NY 12553

Re: "Ta Chuang," "Hsieh," "Feng," "Ta Ch'u," and "Sheng" Amino Acid Powders; Revocation of NY 864727.

DEAR MS. LOCICERO:

This office has determined that New York Ruling Letter (NY) 864727, issued to you on July 19, 1991, in response to your letter of June 27, 1991 requesting a ruling regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of several mixtures of amino acids used as nutritional supplements for horses is in error. Therefore, this ruling revokes NY 864727 and sets forth the correct classification of mixtures of amino acids used as nutritional supplements for horses.

Facts:

In NY 864727, Customs ruled that amino acid mixtures known as "Ta Chuang," "Hsieh," "Feng," "Ta Ch'u," and "Sheng" were classified in subheading 3823.90.5050,

HTSUS, the residual provision for chemical products and preparations of the chemical or allied industries. The analogous provision in the 1998 tariff schedule is subheading 3824.90.9050, HTSUS.

These mixtures of amino acids are sold for use as nutritional supplements for horses. Amino acids are capable of polymerizing to form long chains known as proteins. Proteins play a wide variety of structural and functional roles in biological systems. They form the primary basis of hair, tendons, muscle, skin, and cartilage. Enzymes (biological catalysts) are proteins. In addition, many hormones, such as insulin and growth hormone, are proteins. *McGraw-Hill Multimedia Encyclopedia of Science & Technology.* The merchandise is imported in bulk form.

Issue:

Whether mixtures of amino acids, imported in bulk form for use as nutritional supplements for horses, are classified in the residual provision for chemical products and preparations of the chemical or allied industries.

Law and Analysis:

Merchandise imported into the United States is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context which requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law for all purposes.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in their appropriate order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In understanding the language of the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. *See,* T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The following headings are relevant to the classification of this merchandise:

2309	Preparations of a kind used in animal feeding:
2309.10	Dog or cat food, put up for retail sale
2309.90	Other:
2309.90.10	Mixed feeds or mixed feed ingredients
	Other:
	Other:
	Other:
2309.90.95	Other
* * * * * * *	
3824	Prepared Binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included; residual products of the chemical or allied industries, not elsewhere specified or included:
3824.90	Other:
	Other:
	Other:
	Other:
3824.90.90	Other:
3824.90.9050	Other:

This matter is governed primarily by GRI 1, in that the choice in classification is between two headings. Heading 3824, HTSUS, encompasses only those chemical products which are "not elsewhere specified or included." Thus, if these amino acid mixtures are included within heading 2309, HTSUS, they will not be classified in heading 3824, HTSUS.

EN 23.09 states that "This heading covers sweetened forage and prepared animal feeding stuffs consisting of a mixture of several nutrients designed: * * * (3) for use in making

complete or supplementary feeds." EN 23.09(II)(C) lists amino acids among "Preparations for use in making the complete feeds or supplementary feeds." Thus, a mixture of amino acids used as a nutritional supplement to the equine diet is classified in this heading. At the six-digit subheading level, this product will be classified in subheading 2309.90, HTSUS, as it is not dog or cat food. Within 2309.90, items are classified as "Mixed feeds or mixed feed ingredients" or "Other." "The term 'mixed feeds and mixed-feed ingredients' in subheading 2309.90.10 embraces products of heading 2309 which are admixtures of grains (or products, including byproducts, obtained in milling grains) with molasses, oilcake, oil-cake meal or feedstuffs, and which consist of not less than 6 percent by weight of grain or grain products." Additional U.S. Note 1, Chapter 23. As this merchandise does not contain six percent grain or grain products by weight, it is "other" than "mixed feeds or mixed-feed ingredients." Of the remaining subheadings, the merchandise is best classified in subheading 2309.90.95, HTSUS, the residual provision, as it is not described by any of the more specific provisions.

Holding:

Mixtures of amino acids for use as nutritional supplements for horses, imported in bulk, are classified in subheading 2309.90.95, HTSUS. As this is an "actual use" provision, this classification is satisfied only if use as animal feed is intended at the time of importation, the goods are so used, and proof thereof is furnished within 3 years after the date the goods are entered. *See* Additional U.S. Rules of Interpretation 1(b); 19 CFR 10.133 et seq.

NY 864727 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF A RULING LETTER PERTAINING TO THE CLASSIFICATION OF A BREAST PUMP HOUSING

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of a tariff classification ruling letter

SUMMARY: Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a breast pump housing.

DATE: Comments must be received on or before November 6, 1998.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229 (14th Street entrance). Comments submitted may also be inspected at that address.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Hollaway, Commercial Rulings Division (202) 927–2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Moderniza-

tion) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke District Decision (DD) 813534, dated August 29, 1995, with respect to the classification of a breast pump housing. In DD 813534, the housing was classified under subheading 4202.92.0040 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides, in part, for trunks, suitcases, briefcases, camera cases, handbags, jewelry boxes and similar containers. That ruling is set forth as "Attachment A" to this document. The classification of the housing under subheading 4202.92.0040 was incorrect. The housing should have been classified under subheading 8413.91.9080, HTSUSA, as a part of a breast pump, based on the reasoning set forth in proposed HQ 958471, revoking DD 813534, which is set forth as "Attachment B" to this document.

Before taking this action, we will give consideration to any written comments timely received.

Claims for detrimental reliance under section 177.9, Customs Regulations (19 CFR 177.9), will not be entertained for actions the date of publication of this notice.

Dated: September 21, 1998.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Providence, RI, August 29, 1995.
CLA–2–42:RI:130:G25:DJP
Category: Classification
Tariff No. 4202.92. 9040

MR. GORDON GILES
MEDELA, INC.
4610 Prime Parkway
McHenry, IL 60050–7005

Re: The tariff classification of a pump bag from Hong Kong.

DEAR MR. GILES:

In your letter dated August 3, 1995, you requested a tariff classification ruling.

The samples submitted with your request, Item H–1767, is a pump bag. The bag is described as follows:

Purpose:	Housing for a portable breast pump. Item is specifically designed and fitted for this purpose.
Size:	Approximately 13″ x 13″ x 5″.
Pockets:	Exterior—none. Interior—several pockets designed to house pump and accessories.
Closure:	Plastic twist fastener on flap.
Handles:	Shoulder strap of PVC.

The applicable subheading for the pump bag will be 4202.92.9040, Harmonized Tariff Schedule of the United States (HTS), which provides for trunks, suitcases, tool bags and similar containers with outer surface of sheeting of plastic, other, other, other. The rate of duty will be 19.8 percent ad valorem.

Your sample is being returned as requested.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

RICHARD A. BARRETTE,
District Director.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA-2 RR:CR:TE 958471 RH
Category: Classification
Tariff No. 8413.91.9080

MR. GORDON GILES
DIRECTOR OF PURCHASING
MEDELA, INC.
P.O. Box 660
McHenry, IL 60051–0660

Re: Request for Reconsideration of DD 813534; Breast Pump Housing; Heading 4202; Heading 8413; Heading 9018.

DEAR MR. GILES:

This is in reply to your letter of September 26, 1995, asking us to review District Decision (DD) 813534, dated August 29, 1995, concerning the classification of a housing for a breast pump.

You met with members of my staff on February 5, 1996, and May 27, 1998, to discuss the issues in this case and to demonstrate the function of the breast pump housing. We apologize for the delay in responding to your request.

Facts:

The article under consideration is a housing for a portable breast pump. It is constructed of PVC sponge material and is approximately 13 inches by 13 inches by 5 inches. The housing is manufactured in Hong Kong. The remaining components (breast pump, motor, etc.) will be assembled into the bag in the United States. The bag is designed specifically as a housing or casing for an electrical breast pump motor and related accessories. The housing has an opening and cutouts in the front to allow for the front plate of the pump. Mounted to the housing is a pump front plate with hose nipples to which the hoses and breast suction cups are attached. These components are inconspicuously concealed within the housing by a zippered closure. The pump will be glued into the housing. The bag has a shoulder strap for easy carrying and storage compartments for spare bottles, suction cups and hoses. It also has insulated storage for milk and ice blocks. The importer states that Medela cannot sell the pump if it is not contained within the housing because the exposed electrical components would be hazardous.

In DD 813534, Customs classified the housing under subheading 4202.92.9040 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides, in part, for trunks, suitcases, briefcases, camera cases, handbags, tool bags, jewelry boxes and similar containers with outer surface of sheeting of plastic.

You contend that the breast pump housing should be classified under Chapter 90, HTSUSA, as an accessory to a medical device, or under Chapter 84, HTSUSA, as an accessory to a pump.

Issue:

Is the breast pump housing classifiable under heading 4202, HTSUSA, as a "similar container" with outer surface of sheeting of plastic; under heading 9018, HTSUSA, as an accessory to a medical device; or under heading 8413, HTSUSA, as an accessory to a pump?

Law and Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI.

The first heading we consider is 9018 which encompasses "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof." The EN to heading 9018 state that:

> This heading covers a very wide range of instruments and appliances which, in the vast majority of cases, are used only in professional practice (e.g., by doctors, surgeons, dentists, veterinary surgeons, midwives), either to make a diagnosis, to prevent or treat an illness or to operate, etc.

The EN also list numerous exemplars of the type of medical instruments and appliances which are classifiable under heading 9018, HTSUSA, including needles, surgical knives, catheters, suction tubes, syringes, intratracheal tubes, intubation tubes, blood transfusion apparatus. In this case, the breast pump housing is designed and intended for use by nursing mothers in the home, at work or on travel. Thus, we do not consider it to be medical instruments and appliances under heading 9018.

Another heading under consideration is 4202. In DD 813534, Customs classified the housing in question under subheading 4202.92.9040, HTSUSA, which provides, in part, for trunks, suitcases, briefcases, camera cases, handbags, tool bags, jewelry boxes and similar containers with outer surface of sheeting of plastic. You assert that the housing is not like any item in heading 4202, and that it cannot be used as a "plain bag" or "case" but only as a part of the breast pump. You further state that upon assembly in the United States, the internal motor, the front plate and other components will be permanently assembled within the housing with strips of VELCRO reinforced with silicone glue to assure that the motor is not easily removable. Moreover, you demonstrated during the meeting that the motor must be permanently assembled within the housing as a protection against electrical shock in accordance with Underwriters Laboratories regulations.

Before we determine if the housing was correctly classified in heading 4202 in DD 813534, we will explore its classification as a part of a pump in heading 8413. That heading provides for "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof." It is Customs position that articles which are identifiable as parts of machines or apparatus of Chapters 84 and 85 are classifiable in accordance with Section XVI, Note 2, HTSUSA. Specifically, Note 2(b) covers parts that are provided for in the same heading as the machine or apparatus with which they are solely or principally used. However, for Note 2(b) to be applicable, the status of an article as a part must first be established.

In New York Ruling Letter (NY) 818324, dated February 15, 1996, Customs classified one of your company's casings and/or housings used to house a mini motor breast pump under subheading 8413.91.9080, as other parts of other liquid pumps. In that case, the housing had a small box-like shape with a zipper-closed upper opening and cutouts in the front to allow for the front plate of the pump. It was designed to internally contain a small, battery powered air vacuum pump as well as the battery holder. Mounted on the outside of the housing was a pump front plate which contained the on/off switch and hose nipples to which the air hoses and breast suction cup were attached. The components in that case were not removable. That housing was only large enough to hold the pump and had no additional compartments. You advised us that the pump in question operates similarly to the mini breast pump in NY 818324, which Customs classified under heading 8413.

Originally, in order for an item to be classified as a "part" of an article, that item must have been "something necessary to the completion of that article * * * [and] an integral,

constituent, or component part, without which the article to which it is to be joined, could not function as such article." *United States v. Willoughby Camera Stores. Inc.*, 21 CCPA 322, 324, T.D. 46, 51 (1933), cert. denied, 292 U.S. 640 (1934); *United States v. Antonio Pompeo*, 43 CCPA 9,11, C.A.D. 602 (1955). This rule has been somewhat modified so that a device may be considered a 'part' of an article even though the device is not necessary to the operation of the article, provided that once the device is installed the article cannot function properly without it. *Clipper Belt Lacer Co.. Inc. v. United States*, 14 CIT 146, 738 F. Supp 528 (1990). In order to meet this standard, the device must be dedicated for use with the article. See *Beacon Cycle & Supply Co., Inc. v. United States*, 81 Cust. Ct. 46, 50–51, C.D. 4764, 458 F. Supp. 813, 816–17.

The housing in question provides an inconspicuous way to carry a breast pump for the active mom who must pump at work or other places outside of the home. It is imported by Medela only for assembly with the pump. It is never sold separately and is produced exclusively for the pump. Prior to importation, the housing is precut for assembly of the pump components in the same manner as the housing in NY 818324. The pump is placed and glued into the housing. Medela cannot sell the pump without the housing under Underwriter Laboratory regulations because the housing has to fully encompass the electrical components.

Based on the foregoing we find that the breast pump housing is an integral, constituent, or component part of the pump. The fact that the housing has a carrying strap and additional accessories such as storage compartments for spare bottles, suction cups, hoses, milk and ice blocks does not preclude it from classification as a "part" of the breast pump under heading 8413.

Holding:

The breast pump housing under consideration is classifiable under subheading 8413.91.9080, HTSUSA, which provides for "Pumps for liquids, whether or not fitted with a measuring device; liquid elevators; part thereof: Parts: Of pumps: Other: Other." It is dutiable at the general column one rate at 0.6 percent ad valorem.

DD 813534 is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF A RULING LETTER PERTAINING TO THE CLASSIFICATION OF A FABRIC-COVERED CARDBOARD BOX IMPORTED WITH A RING INSIDE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a tariff classification ruling letter

SUMMARY: Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling pertaining to the tariff classification of a fabric-covered cardboard box imported with a ring inside.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after December 7, 1998.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Hollaway, Commercial Rulings Division (202) 927–2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 19, 1998, Customs published a notice in the CUSTOMS BULLETIN, Volume 32, Number 33, proposing to modify New York Ruling (NY) B88188, dated August 18, 1997, concerning the classification of a fabric-covered cardboard box imported with a ring inside. Comments on the modification were requested. No comments were received.

Pursuant to section 625(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying NY B88188. In NY B88188 the box was classified along with the jade ring under subheading 7116.20.4000 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). The classification of the jade ring under subheading 7116.20.4000 was correct. However, it is our view that the fabric-covered box should have been classified under subheading 6307.90.9989, HTSUSA, as an other made up article.

Headquarters Ruling (HQ) 961206 modifying NY B88188 is set forth as the "Attachment" to this document.

Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice of position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Dated: September 21, 1998.

JOHN E. ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 21, 1998.

CLA–2 RR:CR:TE 961206 RH
Category: Classification
Tariff No. 6307.90.9989

MR. MIKE TODD
EMPIRE INTERNATIONAL
2901 W. Pacific Coast Highway
Suite 365
Newport Beach, CA 92663

Re: Modification of NY B88188; classification of a fabric-covered cardboard box imported with a ring inside; trinket box; jewelry box; heading 4202; heading 6307; GRI 5(a).

DEAR MR. TODD:

A copy of your letter dated July 24, 1997, concerning the classification of a jade ring and a fabric-covered cardboard box was forwarded to our office for review along with New York

Ruling Letter (NY) B88188, issued to you on August 18, 1997, by the Director, National Commodity Specialist Division. In NY B88188, the box was classified along with the jade ring under subheading 7116.20.4000 of the Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as articles of precious or semiprecious stones, in accordance with the General Rules of Interpretation (GRI) 5(a).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1923), notice of the proposed revocation of NY B88188 was published on August 19, 1998, in the CUSTOMS BULLETIN, Volume 32, Number 33.

Prior to the issuance of NY B88188, you state that you imported the box and ring on two occasions. Upon the first importation, the articles were classified under the provisions set forth in the NY ruling. However, Customs detained the goods on the second importation and imposed visa and quota requirements. The specifics of that entry were not provided to us, and we assume for purposes of this ruling that the matter has been resolved.

Facts:

The merchandise under consideration is a box composed of a paperboard base which is covered on the exterior with velvet fabric. The interior has a padded textile lining. The box also has a lid with a padded lining and latch closure. The box is square and comes in two sizes – approximately 7.5 cm x 7.5 cm x 4 cm and 8.5 cm x 8.5 cm x 4 cm. The box is imported with the jade ring inside. We note, however, that only the box was forwarded to our office for review.

Issue:

What is the proper classification of the decorative box?

Law and Analysis:

Classification under the HTSUSA is governed by the GRI's. GRI 1 provides that classification is determined in accordance with the terms of the headings and any relative section or chapter notes. Where goods cannot be classified solely on the basis of GRI 1, the remaining GRI's will be applied in sequential order.

The Explanatory Notes (EN's) to the Harmonized Commodity Description and Coding System assist us in the classification of merchandise. The EN's constitute the official interpretation of the nomenclature at the international level. While not legally binding, they represent the considered views of classification experts of the Harmonized System Committee. It has been the practice of the Customs Service to follow, whenever possible, the terms of the EN's when interpreting the HTSUSA.

In NY B88188, classification of the jade ring, which is not is dispute, was under subheading 7116.20.4000, HTSUSA. The box was classified under the same provision as the ring in accordance with GRI 5(a), which reads:

> Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and entered with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;

The Explanatory Notes to GRI 5(a) state:

> (I) This Rule shall be taken to cover only those containers which:
>
> (1) are specially shaped or fitted to contain a specific article or set of articles, i.e., they are designed specifically to accommodate the article for which they are intended. Some containers are shaped in the form of the article which they contain;
>
> (2) are suitable for long-term use, i.e., they are designed to have a durability comparable to that of the articles for which they are intended. These containers also serve to protect the article when not in use (during transport or storage, for example). These criteria enable them to be distinguished from simple packings;
>
> (3) are presented with the articles for which they are intended, whether or not the articles are packed separately for convenience of transport. Presented separately the containers are classified in their appropriate headings;
>
> (4) are of a kind normally sold with such articles; and
>
> (5) do not give the whole its essential character.

In addition, the EN to GRI 5(a)(III) gives two examples of containers not covered by GRI 5(a)—"a silver caddy containing tea, or an ornamental ceramic bowl containing sweets."

After examining the box you sent us, we find that it, like a silver caddy, is neither specifically shaped nor fitted to hold a particular article. The box may hold various items, i.e., stamps, coins, earrings, pins, etc. Its use is limited only by the imagination of the ultimate consumer and the physical dimensions of the box. Accordingly, it does not qualify for classification with the ring in heading 7116, under the principles of GRI 5(a).

Additionally, since the box will be imported with a jade ring inside, we must consider whether those articles are a set under GRI 3(b). Explanatory Note X to GRI 3(b), which indicates that for purposes of the rule, the term "goods put up in sets for retail sale" means goods which:

> (a) consist of at least two different articles which are *prima facie*, classifiable in different headings;
> (b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and
> (c) are put up in a manner suitable for sale directly to users without repacking (e.g., in boxes or cases or on boards).

The subject goods only meet criteria (a) and are not classifiable as a set. Therefore, the ring and box will be classified separately. The jade ring was properly classified in NY B88188 under subheading 7116.20.4000. Several headings merit consideration for classification of the box. Under GRI 1, consideration is given to the tariff provision for containers of heading 4202, HTSUSA. This heading covers:

> Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber or of paperboard, or wholly or mainly covered with such materials or with paper.

The EN's to heading 4202 state, in part, that:

> The term "jewellery boxes" covers not only boxes specially designed for keeping jewellery, but also similar lidded containers of various dimensions (with or without hinges or fasteners) specially shaped or fitted to contain one or more pieces of jewellery and normally lined with textile material, of the type in which articles of jewellery are presented and sold and which are suitable for long-term use.

As stated above, the box in question may be used to hold a variety of items and is not specially designed for keeping jewelry. Thus, it is not classifiable as a jewelry box under heading 4202.

In previous rulings, Customs determined that boxes similar to the one at issue were "trinket boxes." Trinket boxes are not specially designed, shaped or fitted for jewelry. They are not specially constructed to fit any particular item, but like the box at issue, can be used to store various items. See, HQ 953393, dated April 16, 1993. In that ruling, Customs classified a small pentagon shaped box with a lid, which was constructed out of cardboard and covered with textile materials, in heading 6307, HTSUSA, a residual provision for other made up textile articles.

Moreover, in HQ 954706, dated February 1, 1994, Customs determined that two boxes used in the sale of jewelry products to retailers were trinket boxes classifiable under heading 6307, HTSUSA. One box was a small heart shape and the other box was in the shape of a pentagon. Both boxes were made of paperboard and covered with textile materials. An item of jewelry, such as a chain, bracelet, pendant, ring, earring, etc., was placed inside the box and sold at retail. Like the box under consideration, there were no inserts in the heart or pentagon shaped boxes—the jewelry merely rested on the cushioned interior. Since the boxes were not specially designed, shaped or fitted for jewelry, they were considered trinket boxes and were classified under heading 6307, as other textile articles, as opposed to jewelry boxes of heading 4202. The box at issue is also sold with jewelry inside, but like the boxes in HQ 954706, the instant box is not specially designed, shaped or fitted for jewelry and is properly described as a trinket box.

Trinket boxes are not specifically provided for in the terms of the HTSUSA, and, like the trinket boxes in HQ 954706 and HQ 953393, the instant box is a composite good. Thus, it cannot be classified in accordance with GRI 1. Accordingly, we must look to the remaining GRI's, in order, to determine classification.

GRI 2 directs that "goods consisting of more than one material or substance shall be classified according to the principles of rule 3." The box under consideration is constructed of cardboard and textile fabric. GRI 3(a), reads:

> The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

The applicable headings in this case are 4823, HTSUSA, which provides for, among other things, other articles of paper or paperboard and 6307, HTSUSA, covering other made up articles of textile materials. As each heading refers to only part of the box, they are considered to be equally specific, rendering classification on the basis of specificity (GRI 3(a)) inapplicable.

Under GRI 3(b), articles composed of two or more materials are classified according to their essential character. In this case, the paperboard provides the structure for the box, but the textile fabric provides aesthetic appeal and marketability. As in HQ 953393 and HQ 954706, we are unable to conclude that any one of the component materials imparts the essential character. Therefore, we proceed to GRI 3(c).

GRI 3(c), provides that: "When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration." Under this rule, the boxes at issue are classifiable under heading 6307, HTSUSA.

Holding:

The jade ring was properly classified in NY B88188, HTSUSA. However, that ruling is modified to reflect the correct classification of the paperboard boxes covered with textile fabric under subheading 6307.90.9989, HTSUSA, which provides for other made up articles, including dress patterns: other: other: other: other: other. The applicable rate of duty is 7% ad valorem.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

NY B88188, dated August 18, 1997, is hereby modified. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become affective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN E. ELKINS
(for John Durant, Director,
Commercial Rulings Division.)

U.S. Customs Service

Proposed Rulemaking

19 CFR Parts 162, 171 and 191

RIN 1515–AC21

PENALTIES FOR FALSE DRAWBACK CLAIMS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to set forth the procedures to be followed when false drawback claims are filed and penalties are thereby incurred. The proposed regulatory changes would implement section 622 of the Customs modernization provisions of the North American Free Trade Agreement Implementation Act. These new provisions track, to the greatest extent possible, the procedures that have been set forth for section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592). This document also sets forth proposed mitigation guidelines that Customs would follow in arriving at a just and reasonable assessment and disposition of liabilities when false drawback claims are filed and penalties are incurred. Finally, the document proposes to amend the Customs Regulations in order to provide more specificity regarding the grounds and procedures for removal of a participant from the drawback compliance program.

DATES: Comments must be received on or before November 30, 1998.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Charles Ressin, Penalties Branch, Office of Regulations and Rulings, 202–927–2264.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This document proposes to amend the Customs Regulations to implement section 622 of Title VI of the North American Free Trade Agree-

ment Implementation Act (Pub. L. 103–182). Title VI of the North American Free Trade Agreement Implementation Act is popularly known as the Customs Modernization Act. Paragraph (a) of section 622 amended the Tariff Act of 1930, as amended, by adding section 593A, which prohibits the filing of false (fraudulent or negligent) drawback claims and prescribes the actions that Customs may take, including the assessment of monetary penalties, if such claims are filed (gross negligence is not separately set forth as a level of culpability in the new statutory provision). New section 593A was codified as section 1593a of Title 19 of the United States Code (19 U.S.C. 1593a, hereinafter "the statute").

As in the case of penalties under section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), specific procedures and other requirements are set forth in the statute for prepenalty notices and penalty claims, the former not being required by the statute if the penalty is $1,000 or less. The statute provides that approval of Customs Headquarters is required if a prepenalty notice alleging fraud is contemplated. The statute also further provides for the applicability of section 618 of the Tariff Act of 1930, as amended (19 U.S.C. 1618), which authorizes the administrative remission or mitigation of penalties. Written decisions, setting forth a final determination and findings of fact and conclusions of law upon which that determination was based, are also mandated by the statute.

Rather than setting forth specific penalty amounts, the statute provides for the assessment of monetary penalties in amounts not to exceed a specific percentage of the actual or potential loss of revenue, with the applicable percentage depending on the level of culpability, whether there have been prior violations involving the same issue, and whether the violator is a participant in the Customs drawback compliance program (the statute provides for the establishment of a drawback compliance program, and regulatory provisions relating to the operation of that program were adopted as part of the amendments to the Customs Regulations regarding drawback published in the Federal Register as T.D. 98–16 on March 5, 1998, 63 FR 10970). For purposes of applying the monetary penalties prescribed in the statute, Customs proposes in this document to define loss of revenue with reference to the amount of drawback that is claimed and to which the claimant is not entitled.

The statute further provides for limited penalty assessment for filing a false drawback claim if there is a prior disclosure of the violation. As in cases brought under section 592, the limited penalty assessment would be applicable only in those instances in which the circumstances of the violation are disclosed before, or without knowledge of the commencement of, a formal investigation. In this context, this document should be read in conjunction with the notice of proposed rulemaking regarding prior disclosure that was published in the Federal Register on September 26, 1996 (61 FR 50459).

The statute provides for penalties, or notices of violation in lieu of penalties, as set forth below in cases involving negligent violations (under the statute, a repetitive violation is one which involves the same issue as a prior violation):

1. If the violator is not a participant in the drawback compliance program, Customs shall assess monetary penalties in amounts not to exceed the following:

a. 20 percent of the loss of revenue for the first violation;
b. 50 percent of the loss of revenue for the first repetitive violation; and
c. The loss of revenue in the case of a second and each subsequent repetitive violation.

2. If the violator is a participant in the drawback compliance program and is generally in compliance with the provisions thereof, the following actions shall be taken by Customs:

a. For a first violation and for any other violation that is not repetitive or that involves the same issue as a prior violation but does not occur within three years from the date of that prior violation, a notice of violation (warning letter) shall be issued;
b. For the first violation that is repetitive and that occurs within three years from the date of the violation of which it is repetitive, a monetary penalty of up to 20 percent of the loss of revenue shall be assessed;
c. For the second violation that is repetitive and that occurs within three years from the date of the first of two violations of which it is repetitive, a monetary penalty of up to 50 percent of the loss of revenue shall be assessed; and
d. For a third and each subsequent violation that is repetitive and that occurs within three years from the date of the first of three or more violations of which it is repetitive, a monetary penalty not to exceed the loss of revenue shall be assessed.

In the case of a fraudulent violation, the statute makes no distinction between drawback compliance program participants and those who do not participate in the program: a fraudulent violation gives rise to a monetary penalty in an amount not exceeding three times the loss of revenue or, if there has been a prior disclosure regarding the fraudulent violation, in an amount not exceeding the loss of revenue.

If there has been a valid prior disclosure regarding a negligent violation, drawback compliance program participants and those who do not participate in that program are also treated the same: the violator is subject to a monetary penalty that may not exceed an amount equal to the interest computed on the basis of the prevailing rate of interest applied under 26 U.S.C. 6621 on the amount of actual revenue of which the United States is or may be deprived during the period from the date of overpayment of the claim to the date of tender of the overpaid amount.

In order to obtain the benefits of prior disclosure in both fraud and negligence cases, tender of the amount of the overpayment is required

either at the time of disclosure or within 30 days (or such longer period as Customs may provide) after Customs gives notice of its calculation of the amount of the overpayment.

Paragraph (b) of section 622 of the Customs Modernization Act provides that the provisions of the statute shall apply only to drawback claims filed on and after Customs implements nationwide an automated drawback selectivity program, and mandates the publication in the Customs Bulletin of the effective date of the selectivity program.

The proposed amendments set forth in this document to implement the statute involve changes to the penalty procedure provisions within Parts 162 and 171 of the regulations and the addition of a new Appendix D to Part 171 to set forth guidelines for the imposition and mitigation of monetary penalties incurred under the statute. To the greatest extent possible, and except where the statute expressly mandates a different approach, the regulatory amendments set forth in this document are modeled on the section 592 regulatory provisions and thus, among other things, reflect the definitions of "fraud" and "negligence" (which includes gross negligence) that are intended to be applied in cases brought under section 592 (*see* Senate Report 103–189 at pages 73–74). As noted above, these proposed regulations, if adopted as a final rule, will not be effective until Customs implements an automated drawback selectivity program.

Finally, with regard to the final amendments to the Customs Regulations regarding drawback published as T.D. 98–16 as mentioned above, Customs notes that the provisions regarding the operation of the drawback compliance program (set forth as Subpart S within Part 191) include, in § 191.194(e) and (f), procedures regarding the revocation of certification for participation in the program. However, contrary to the approach taken elsewhere in the Customs Regulations in the context of a revocation or removal of a privilege, those drawback compliance program provisions do not include specific grounds for such action. Moreover, those paragraph (e) and (f) texts only refer to proposed revocation actions (with a delayed effective date following notice of the proposed revocation). Thus, no provision exists in those regulatory texts for a revocation with immediate effect when the basis for the revocation involves willfulness on the part of the program participant or when public health, interest, or safety requires immediate revocation, notwithstanding the fact that such immediate action may be necessary and would be consistent with the license revocation principles enshrined in the Administrative Procedure Act (see 5 U.S.C. 558(c)). This document proposes to revise § 191.194(e) and (f) in order to address the above points and in order to otherwise improve the organization of, and procedures reflected in, those texts. In addition, the proposed text revisions refer to "removal" (rather than "revocation") of certification in order to reflect statutory terminology (see 19 U.S.C. 1593a(f)(1)).

COMMENTS

Before adopting these proposed amendments, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

Insofar as the proposed regulations closely follow legislative direction, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.),* it is certified that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

LIST OF SUBJECTS

19 CFR Part 162

Customs duties and inspection; Law enforcement; Penalties; Seizures and forfeitures.

19 CFR Part 171

Administrative practice and procedure; Customs duties and inspection; Law enforcement; Penalties; Seizures and forfeitures.

19 CFR Part 191

Administrative practice and procedure; Customs duties and inspection; Drawback.

PROPOSED AMENDMENTS TO THE REGULATIONS

For the reasons set forth above, it is proposed to amend Parts 162, 171 and 191 of the Customs Regulations (19 CFR Parts 162, 171 and 191) as follows:

PART 162—RECORDKEEPING, INSPECTION, SEARCH, AND SEIZURE

1. The general authority citation for Part 162 is revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * * * *

2. In § 162.71, paragraphs (b) through (e) are redesignated as paragraphs (d) through (g) and the heading for paragraph (a) is revised, and new paragraphs (b) and (c) are added, to read as follows:

§ 162.71 Definitions.

* * * * * * *

(a) *Loss of duties under section 592.* * * *

(b) *Loss of revenue under section 593A.* When used in § 162.73a, the term "loss of revenue" means the amount of drawback that is claimed and to which the claimant is not entitled and includes both actual and potential loss of revenue.

(1) *Actual loss of revenue.* When used in §§ 162.73a, 162.74(h), 162.77a and 162.79b, the term "actual loss of revenue" means the amount of drawback that is claimed and has been paid to the claimant and to which the claimant is not entitled.

(2) *Potential loss of revenue.* When used in § 162.77a, the term "potential loss of revenue" means the amount of drawback that is claimed and has not been paid to the claimant and to which the claimant is not entitled.

(c) *Repetitive violation.* When used in § 162.73a to describe a violation, "repetitive" has reference to a violation by a person that involves the same issue as a prior violation by that person.

* * * * * * *

3. A new § 162.73a is added to read as follows:

§ 162.73a Penalties under section 593A, Tariff Act of 1930, as amended.

(a) *Maximum penalty without prior disclosure for a drawback compliance program nonparticipant.* If the person concerned has not made a prior disclosure as provided in § 162.74 and has not been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), shall not exceed:

(1) For fraudulent violations, three times the loss of revenue; and

(2) For negligent violations,

(i) 20 percent of the loss of revenue for the first violation,

(ii) 50 percent of the loss of revenue for the first repetitive violation, or

(iii) One times the loss of revenue for the second and each subsequent repetitive violation.

(b) *Maximum penalty without prior disclosure for a drawback compliance program participant*—(1) *General.* If the person concerned has not made a prior disclosure as provided in § 162.74 and has been certified as a participant in, and is generally in compliance with the procedures and requirements of, the drawback compliance program provided for in part 191 of this chapter, the monetary penalty or other sanction under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), shall not exceed:

(i) For fraudulent violations, three times the loss of revenue; and

(ii) For negligent violations,

(A) Issuance of a written notice of a violation (warning letter) for the first violation and for any other violation that is not repetitive or that is

repetitive but does not occur within three years from the date of the violation of which it is repetitive,

(B) 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive,

(C) 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive, or

(D) One times the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(2) *Notice of violation and response thereto*—(i) The notice issued by Customs under paragraph (b)(1)(ii)(A) shall:

(A) State that the person concerned has violated section 593A;

(B) Explain the nature of the violation; and

(C) Warn the person concerned that future violations of section 593A may result in the imposition of monetary penalties. The notice shall also warn the person concerned that repetitive violations may result in removal of certification under the drawback compliance program provided for in part 191 of this chapter until the person takes corrective action that is satisfactory to Customs.

(ii) Within 30 days from the date of mailing of the notice issued under paragraph (b)(1)(ii)(A), the person concerned shall notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation.

(c) *Maximum penalty with prior disclosure.* If the person concerned has made a prior disclosure as provided in § 162.74, whether or not such person has been certified as a participant in the drawback compliance program under part 191 of this chapter, the monetary penalty under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), shall not exceed:

(1) For fraudulent violations, one times the loss of revenue; and

(2) For negligent violations, an amount equal to the interest accruing on the actual loss of revenue during the period from the date of overpayment of the claim to the date on which the person concerned tenders the amount of the overpayment based on the prevailing rate of interest under 26 U.S.C. 6621.

4. A new § 162.77a is added to read as follows:

§ 162.77a Prepenalty notice for violation of section 593A, Tariff Act of 1930, as amended.

(a) *When required.* If the appropriate Customs field officer has reasonable cause to believe that a violation of section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a) has occurred, and determines that further proceedings are warranted, the officer shall issue to the person concerned a notice of intent to issue a claim for a monetary penalty.

(b) *Contents*—(1) *Facts of violation.* The prepenalty notice shall:

(i) Identify the drawback claim;

(ii) Set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

(iii) Specify all laws and regulations allegedly violated;

(iv) Disclose all the material facts which establish the alleged violation;

(v) State whether the alleged violation occurred as a result of fraud or negligence; and

(vi) State the estimated actual or potential loss of revenue due to the drawback claim and, taking into account all circumstances, the amount of the proposed monetary penalty.

(2) *Right to make presentations.* The prepenalty notice also shall inform the person of his right to make an oral and a written presentation within 30 days of mailing of the notice (or such shorter period as may be prescribed under § 162.78) as to why a claim for a monetary penalty should not be issued or, if issued, why it should be in a lesser amount than proposed.

(c) *Exceptions.* A prepenalty notice shall not be issued for a violation of 19 U.S.C. 1593a if the amount of the proposed monetary penalty is $1,000 or less.

(d) *Prior approval.* If an alleged violation of 19 U.S.C. 1593a occurred as a result of fraud, a prepenalty notice shall not be issued without prior approval by Customs Headquarters.

5. Section 162.79a is amended by removing the references "§ 162.76(b)(1) or § 162.77(b)(1)" and adding, in their place, "§ 162.76(b)(1), § 162.77(b)(1) or § 162.77a(b)(1) and (b)(2)".

6. Section 162.79b is revised to read as follows:

§ 162.79b Recovery of actual loss of duties or revenue.

Whether or not a monetary penalty is assessed under this subpart, the appropriate Customs field officer shall require the deposit of any actual loss of duties resulting from a violation of section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592) or any actual loss of revenue resulting from a violation of section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a), notwithstanding that the liquidation of the entry to which the loss is attributable has become final. If a person is liable for the payment of actual loss of duties or actual loss of revenue in any case in which a monetary penalty is not assessed or a written notification of claim of monetary penalty is not issued, the port director shall issue a written notice to the person of the liability for the actual loss of duties or actual loss of revenue. The notice shall identify the merchandise and entries involved, state the loss of duties or revenue and how it was calculated, and require the person to deposit or arrange for payment of the duties or revenue within 30 days from the date of the notice. Any determination of actual loss of duties or actual loss of revenue under this section is subject to review upon written application to the Commissioner of Customs.

PART 171—FINES, PENALTIES, AND FORFEITURES

1. The authority citation for Part 171 is revised to read in part as follows:

Authority: 19 U.S.C. 66, 1592, 1593a, 1618, 1624. * * *

2. Section 171.21 is revised to read as follows:

§ 171.21 Written decisions.

If a petition for relief relates to a violation of section 592, 593A or 641, Tariff Act of 1930, as amended (19 U.S.C. 1592, 19 U.S.C. 1593a or 19 U.S.C. 1641), the petitioner shall be provided with a written statement setting forth the decision on the matter and the findings of fact and conclusions of law upon which the decision is based.

3. Part 171 is amended by adding a new Appendix D to read as follows:

APPENDIX D TO PART 171—GUIDELINES FOR THE IMPOSITION AND MITIGATION OF PENALTIES FOR VIOLATIONS OF 19 U.S.C. 1593A

A monetary penalty incurred under section 593A, Tariff Act of 1930, as amended (19 U.S.C. 1593a; hereinafter referred to as section 593A), may be remitted or mitigated under section 618, Tariff Act of 1930, as amended (19 U.S.C. 1618; hereinafter referred to as section 618), if it is determined that there exist such mitigating circumstances as to justify remission or mitigation. The guidelines below will be used by Customs in arriving at a just and reasonable assessment and disposition of liabilities arising under section 593A within the stated limitations. It is intended that these guidelines shall be applied by Customs officers in prepenalty proceedings, in determining the monetary penalty assessed in the penalty notice, and in arriving at a final penalty disposition. The assessed or mitigated penalty amount set forth in Customs administrative disposition determined in accordance with these guidelines does not limit the penalty amount which the Government may seek in bringing a civil enforcement action pursuant to 19 U.S.C. 1593a(i).

(A) VIOLATIONS OF SECTION 593A

A violation of section 593A occurs when a person, through fraud or negligence, seeks, induces, or affects, or attempts to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or any omission which is material, or aids or abets any other person in the foregoing violation. There is no violation if the falsity is due solely to clerical error or mistake of fact unless the error or mistake is part of a pattern of negligent conduct. Also, the mere nonintentional repetition by an electronic system of an initial clerical error shall not constitute a pattern of negligent conduct. Nevertheless, if Customs has drawn the person's attention to the nonintentional repetition by an electronic system of an initial clerical error, subsequent failure to correct the error could constitute a violation of section 593A.

(B) DEGREES OF CULPABILITY

There are two degrees of culpability under section 593A: negligence and fraud.

(1) *Negligence.* A violation is determined to be negligent if it results from an act or acts (of commission or omission) done with actual knowledge of, or wanton disregard for, the relevant facts and with indifference to, or disregard for, the offender's obligations under the statute or done through the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

(2) *Fraud.* A violation is determined to be fraudulent if the material false statement, omission or act in connection with the transaction was committed (or omitted) knowingly, i.e., was done voluntarily and intentionally, as established by clear and convincing evidence.

(C) ASSESSMENT OF PENALTIES

(1) *Issuance of Prepenalty Notice.* As provided in § 162.77a of the Customs Regulations (19 CFR 162.77a), if Customs has reasonable cause to believe that a violation of section 593A has occurred and determines that further proceedings are warranted, a notice of intent to issue a claim for a monetary penalty shall be issued to the person concerned. In issuing such prepenalty notice, the appropriate Customs field officer shall make a tentative determination of the degree of culpability and the amount of the proposed claim. A prepenalty notice shall not be issued if the claim does not exceed $1,000.

(2) *Issuance of Penalty Notice.* After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (C)(1), the appropriate Customs field officer shall determine whether any violation described in section (A) has occurred. If a notice was issued under paragraph (C)(1) and the appropriate Customs field officer determines that there was no violation, Customs shall promptly issue a written statement of the determination to the person to whom the notice was sent. If the appropriate Customs field officer determines that there was a violation, Customs shall issue a written penalty claim to the person concerned. The written penalty claim shall specify all changes in the information provided in the prepenalty notice issued under paragraph (C)(1). The person to whom the penalty notice is issued shall have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, Customs shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(D) MAXIMUM PENALTIES

(1) *Fraud.* In the case of a fraudulent violation of section 593A, the monetary penalty shall be in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) *Negligence.*

(a) *In General.* In the case of a negligent violation of section 593A, the monetary penalty shall be in an amount not to exceed 20 percent of the actual or potential loss of revenue for the first violation.

(b) *Repetitive Violations.* For the first negligent violation that is repetitive (i.e., involves the same issue and the same violator), the penalty shall be in an amount not to exceed 50 percent of the actual or potential loss of revenue. The penalty for a second and each subsequent repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue.

(3) *Prior Disclosure.*

(a) *In General.* Subject to paragraph (D)(3)(b), if the person concerned discloses the circumstances of a violation of section 593A before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this Appendix may not exceed:

(i) In the case of fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) If the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under 26 U.S.C. 6621 on the amount of actual revenue of which the United States is or may be deprived during the period that begins on the date of overpayment of the claim and ends on the date on which the person concerned tenders the amount of the overpayment.

(b) *Condition Affecting Penalty Limitations.* The limitations in paragraph (D)(3)(a) on the amount of the monetary penalty to be assessed apply only if the person concerned tenders the amount of the overpayment made on the claim either at the time of the disclosure or within 30 days (or such longer period as Customs may provide) from the date of notice by Customs of its calculation of the amount of overpayment.

(c) *Burden of Proof.* The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(d) *Commencement of Investigation.* For purposes of this Appendix, a formal investigation of a violation is considered to be commenced with regard to the disclosing party, and with regard to the disclosed information, on the date recorded in writing by Customs as the date on which facts and circumstances were discovered which caused Customs to believe that a possibility of a violation of section 593A existed.

(e) *Exclusivity.* Penalty claims under section D shall be the exclusive civil remedy for any drawback-related violation of section 593A.

(E) DEPRIVATION OF LAWFUL REVENUE

Notwithstanding section 514, Tariff Act of 1930, as amended (19 U.S.C. 1514), if the United States has been deprived of lawful duties and taxes resulting from a violation of section 593A, Customs shall require that such duties and taxes be restored whether or not a monetary penalty is assessed.

(F) FINAL DISPOSITION OF PENALTY CASES WHEN THE DRAWBACK CLAIMANT IS NOT A CERTIFIED PARTICIPANT IN THE DRAWBACK COMPLIANCE PROGRAM

(1) *In General*. Customs shall consider all information in the petition and all available evidence, taking into account any mitigating, aggravating, and extraordinary factors, in determining the final assessed penalty. All factors considered should be stated in the decision.

(2) *Penalty Disposition When There Has Been No Prior Disclosure*.

(a) *Nonrepetitive Negligent Violation*. The final penalty disposition shall be in an amount ranging from a minimum of 10 percent of the actual or potential loss of revenue to a maximum of 20 percent of the actual or potential loss of revenue. (b) *Repetitive Negligent Violation*.

(i) *First Repetitive Negligent Violation*. The final penalty disposition shall be in an amount ranging from a minimum of 25 percent of the actual or potential loss of revenue to a maximum of 50 percent of the actual or potential loss of revenue.

(ii) *Second and Each Subsequent Repetitive Negligent Violation*. The final penalty disposition shall be in an amount ranging from a minimum of 50 percent of the actual or potential loss of revenue to a maximum of 100 percent of the actual or potential loss of revenue.

(c) *Fraudulent Violation*. The final penalty disposition shall be in an amount ranging from a minimum of 1.5 times the actual or potential loss of revenue to a maximum of 3 times the actual or potential loss of revenue.

(3) *Penalty Disposition When There Has Been a Prior Disclosure*.

(a) *Negligent Violation*. The final penalty disposition shall be in an amount equal to the interest determined in accordance with paragraph (D)(3)(a)(ii).

(b) *Fraudulent Violation*. The final penalty disposition shall be in an amount equal to 100 percent of the actual or potential loss of revenue.

(4) *Mitigating Factors*. The following factors shall be considered in mitigation of the proposed or assessed penalty claim or final penalty amount, provided that the case record sufficiently establishes their existence. The list is not exclusive.

(a) *Contributory Customs Error*. This factor includes misleading or erroneous advice given by a Customs official in writing to the alleged violator, but this factor may be applied in such a case only if it appears that the alleged violator reasonably relied upon the written information and the alleged violator fully and accurately informed Customs of all relevant facts. The concept of comparative negligence may be utilized in determining the weight to be assigned to this factor. If the Cus-

toms error contributed to the violation, but the alleged violator is also culpable, the Customs error is to be considered as a mitigating factor. If it is determined that the Customs error was the sole cause of the violation, the proposed or assessed penalty is to be cancelled.

(b) *Cooperation with the Investigation*. To obtain the benefits of this factor, the alleged violator must exhibit cooperation beyond that expected from a person under investigation for a Customs violation. An example of the cooperation contemplated includes assisting Customs officers to an unusual degree in auditing the books and records of the alleged violator (e.g., incurring extraordinary expenses in providing computer runs solely for submission to Customs to assist the agency in cases involving an unusually large number of entries and/or complex issues). Another example consists of assisting Customs in obtaining additional information relating to the subject violation or other violations. Merely providing the books and records of the alleged violator may not be considered cooperation justifying mitigation inasmuch as Customs has the right to examine an importer's books and records pursuant to 19 U.S.C. 1508–1509.

(c) *Immediate Remedial Action*. This factor includes the payment of the actual loss of revenue prior to the issuance of a penalty notice and within 30 days after Customs notifies the alleged violator of the actual loss of revenue attributable to the violation. In appropriate cases, where the alleged violator provides evidence that, immediately after learning of the violation, substantial remedial action was taken to correct organizational or procedural defects, immediate remedial action may be granted as a mitigating factor. Customs encourages immediate remedial action to ensure against future incidents of non-compliance.

(d) *Prior Good Record*. Prior good record is a factor only if the alleged violator is able to demonstrate a consistent pattern of filing drawback claims without violation of section 593A, or any other statute prohibiting the making or filing of a false statement or document in connection with a drawback claim. This factor will not be considered in alleged fraudulent violations of section 593A.

(e) *Inability to Pay the Customs Penalty*. The party claiming the existence of this factor must present documentary evidence in support thereof, including copies of income tax returns for the previous 3 years and an audited financial statement for the most recent fiscal quarter. In certain cases, Customs may waive the production of an audited financial statement or may request alternative or additional financial data in order to facilitate an analysis of a claim of inability to pay (e.g., examination of the financial records of a foreign entity related to the U.S. company claiming inability to pay). In addition, the alleged violator must present information reflecting ownership and related domestic and foreign parties and must provide information reflecting its current financial condition, including books and records of account, bank statements, other tax records (for example, sales tax returns) and a list of assets with current values; if the alleged violator is a closely held

corporation, similar current financial information must be provided on the shareholders, wherever they are located.

(f) *Customs Knowledge*. This factor may be used in non-fraud cases if it is determined that Customs had actual knowledge of a violation and failed, without justification, to inform the violator so that it could have taken earlier remedial action. This factor shall not be applicable when a substantial delay in the investigation is attributable to the alleged violator.

(5) *Aggravating Factors*. Certain factors may be determined to be aggravating factors in calculating the amount of the proposed or assessed penalty claim or the amount of the final administrative penalty. The presence of one or more aggravating factors may not be used to raise the level of culpability attributable to the alleged violations, but may be used to offset the presence of mitigating factors. The following factors shall be considered "aggravating factors", provided that the case record sufficiently establishes their existence. The list is not exclusive.

(a) Obstructing an investigation or audit.

(b) Withholding evidence.

(c) Providing misleading information concerning the violation.

(d) Prior substantive violations of section 593A for which a final administrative finding of culpability has been made.

(e) Failure to comply with a Customs summons or lawful demand for records.

(G) DRAWBACK COMPLIANCE PROGRAM PARTICIPANTS

(1) *In General*. Special alternative procedures and penalty assessment standards apply in the case of negligent violations of section 593A committed by persons who are certified as participants in the Customs drawback compliance program and who are generally in compliance with the procedures and requirements of that program. Provisions regarding the operation of the drawback compliance program are set forth in part 191 of the Customs Regulations (19 CFR part 191).

(2) *Alternatives to Penalties*. When a participant described in paragraph (G)(1) commits a violation of section 593A, in the absence of fraud or repeated violations and in lieu of a monetary penalty, Customs shall issue a written notice of the violation (warning letter).

(a) *Contents of Notice*. The notice shall:

(i) State that the person has violated section 593A;

(ii) Explain the nature of the violation; and

(iii) Warn the person that future violations of section 593A may result in the imposition of monetary penalties and that repetitive violations may result in removal of certification under the drawback compliance program until the person takes corrective action that is satisfactory to Customs.

(b) *Response to Notice*. Within 30 days from the date of mailing of the written notice, the person shall notify Customs in writing of the steps that have been taken to prevent a recurrence of the violation. If the person fails to provide such notification in a timely manner, any penalty

assessed for a repetitive violation under paragraph (G)(3) shall not be subject to mitigation under this Appendix.

(3) *Repetitive Violations.*

(a) *In General.* A person who has been issued a written notice under paragraph (G)(2) and who subsequently commits a negligent violation that is repetitive (i.e., involves the same issue), and any other person who is a participant described in paragraph (G)(1) and who commits a repetitive negligent violation, is subject to one of the following monetary penalties:

(i) An amount not to exceed 20 percent of the loss of revenue for the first repetitive violation that occurs within three years from the date of the violation of which it is repetitive;

(ii) An amount not to exceed 50 percent of the loss of revenue for the second repetitive violation that occurs within three years from the date of the first of two violations of which it is repetitive; and

(iii) An amount not to exceed 100 percent of the loss of revenue for the third and each subsequent repetitive violation that occurs within three years from the date of the first of three or more violations of which it is repetitive.

(b) *Repetitive Violations Outside 3-year Period.* If a participant described in paragraph (G)(1) commits a negligent violation that is repetitive but that did not occur within 3 years of the violation of which it is repetitive, the new violation shall be treated as a first violation for which a written notice shall be issued in accordance with paragraph (G)(2), and each repetitive violation subsequent thereto that occurs within any 3-year period described in paragraph (G)(3)(a) shall result in the assessment of the applicable monetary penalty prescribed in that paragraph.

(4) *Final Penalty Disposition When There Has Been No Prior Disclosure.*

(a) *In General.* Customs shall consider all information in the petition and all available evidence, taking into account any mitigating factors (see paragraph (F)(4)), aggravating factors (see paragraph (F)(5)), and extraordinary factors in determining the final assessed penalty. All factors considered should be stated in the decision.

(b) *First Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2).* The final penalty disposition shall be in an amount ranging from a minimum of 10 percent of the loss of revenue to a maximum of 20 percent of the loss of revenue.

(c) *Second Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or (G)(3).* The final penalty disposition shall be in an amount ranging from a minimum of 25 percent of the loss of revenue to a maximum of 50 percent of the loss of revenue.

(d) *Third and Each Subsequent Repetitive Negligent Violation Within 3 Years of Violation Handled Under Paragraph (G)(2) or (G)(3).* The final penalty disposition shall be in an amount ranging from a minimum

of 50 percent of the loss of revenue to a maximum of 100 percent of the loss of revenue.

(e) *Fraudulent Violations.* The final penalty disposition shall be the same as in the case of fraudulent violations committed by persons who are not participants in the drawback compliance program (see paragraph (F)(2)(c)).

(5) *Final Penalty Disposition When There Has Been A Prior Disclosure.* The final penalty disposition shall be the same as in the case of persons who are not participants in the drawback compliance program (see paragraph (F)(3)).

PART 191—DRAWBACK

1. The authority citation for Part 191 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * * * *

§§ 191.191–191.195 also issued under 19 U.S.C. 1593a.

2. In § 191.194, paragraphs (e) and (f) are revised to read as follows:

§ 191.194 Action on application to participate in compliance program.

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(e) *Certification removal*—(1) *Grounds for removal.* The certification for participation in the drawback compliance program by a party may be removed when any of the following conditions are discovered:

(i) The certification privilege was obtained through fraud or mistake of fact;

(ii) The program participant is no longer in compliance with the Customs laws and regulations, including the requirements set forth in § 191.192;

(iii) The program participant repeatedly files false drawback claims or false or misleading documentation or other information relating to such claims; or

(iv) The program participant is convicted of any felony or has committed acts which would constitute a misdemeanor or felony involving theft, smuggling, or any theft-connected crime.

(2) *Removal procedure.* If Customs determines that the certification of a program participant should be removed, the applicable drawback office shall serve the program participant with written notice of the removal. Such notice shall inform the program participant of the grounds for the removal and shall advise the program participant of its right to file an appeal of the removal in accordance with paragraph (f) of this section.

(3) *Effect of removal.* The removal of certification shall be effective immediately in cases of willfulness on the part of the program participant or when required by public health, interest, or safety. In all other

cases, the removal of certification shall be effective when the program participant has received notice under paragraph (e)(2) of this section and either no appeal has been filed within the time limit prescribed in paragraph (f)(2) of this section or all appeal procedures thereunder have been concluded by a decision that upholds the removal action. Removal of certification may subject the affected person to penalties.

(f) *Appeal of certification denial or removal*—(1) *Appeal of certification denial*. A party may challenge a denial of an application for certification as a participant in the drawback compliance program by filing a written appeal, within 30 days of issuance of the notice of denial, with the applicable drawback office. A denial of an appeal may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Operations, within 30 days after issuance of the applicable drawback office's appeal decision. Customs Headquarters will review the appeal and will respond with a written decision within 30 days after receipt of the appeal unless circumstances require a delay in issuance of the decision. If the decision cannot be issued within the 30-day period, Customs Headquarters will advise the appellant of the reasons for the delay and of any further actions which will be carried out to complete the appeal review and of the anticipated date for issuance of the appeal decision.

(2) *Appeal of certification removal*. A party who has received a Customs notice of removal of certification for participation in the drawback compliance program may challenge the removal by filing a written appeal, within 30 days after issuance of the notice of removal, with the applicable drawback office. A denial of an appeal may itself be appealed to Customs Headquarters, Office of Field Operations, Office of Trade Operations, within 30 days after issuance of the applicable drawback office's appeal decision. Customs Headquarters shall consider the allegations upon which the removal was based and the responses made thereto by the appellant and shall render a written decision on the appeal within 30 days after receipt of the appeal.

ROBERT S. TROTTER,
Acting Commissioner of Customs.

Approved: August 3, 1998.

DENNIS M. O'CONNELL,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, September 29, 1998 (63 FR 51868)]

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Federal Recycling Program
Printed on Recycled Paper
U.S. G.P.O. 1998–432–394–80004